

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-41385-2023

Date of Decision:-21.03.2024

Sagar.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Namit Khurana, Advocate for the Petitioner.

Mr. Rajiv Goel, Deputy Advocate General, Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The Prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.750 dated 11.09.2021 under Section 302, 120-B, 201 IPC registered at Police Station City Yamuna Nagar.

2. The instant FIR came to be registered at the instance of Shivali Sharma who stated that he had younger brother by the name of Surya. A Ganesh Utsav was organized every year on behalf of the Surya Club and even that year a Pandal was to be set up near the gate of Guru Gobind Singh Institute. On 10.09.2021 he (complainant), his brother Surya and younger brother Krishna @ Boxer were showing the location where the tent was to be put up for the Ganesh Utsav to the tent man. In the meantime, 5/ 7 motor cycles with 2/3 persons on each motor cycle totalling about 15/20 boys came

to the spot with swords, iron rods wrapped around with barbed wire and empty glass bottles. All the accused attacked his brother Surya with their respective weapons. He (complainant) and his younger brother Krishna @ Boxer hid there in order to save their lives. Out of the boys who were beating Surya, he (complainant) had identified Akshit Garg, Shanky, Shiva, Ashu Pagwal, Ganni Mehra, Nitin Mehra Parvej and Shahrukh. He could identify the other boys, if they came in front of him. Harsh and Akshit gave sword blows on the head of Surya whereas Ashu Gujjar, Ganni Mehra, Nitin Mehra, Shanky, Shiva, Parvej and Shahrukh caused injuries on the head, legs, arms and hands of Surya with iron rods wrapped with barbed wire. Other boys gave blows with glass bottles on the head and face of Surya. The injuries subsequently had led to the death of Surya at PGI, Chandigarh where he had been referred from Civil Hospital, Yamuna Nagar. The motive was that Surya had got registered a case against Manish Ganje, Nitin Mehra etc., and they had been pressurising Surya for giving an affidavit of their innocence.

Pursuant to the registration of the FIR the investigation began and the call detail records of a number of mobile phones were collected. Moni @ Ashu, Arjun @ Harsh and Parveen @ Ritik were apprehended and a motor cycle make Splendor was recovered from them.

On 15.09.2021 the aforementioned accused disclosed the name of the Tarun (since granted bail vide order dated 28.11.2023 in CRR-1027-2023) and other including Sagar (petitioner). During investigation, iron rods/pipes and a wooden danda used in the commission of the offence were recovered and the CCTV footage was obtained. As per the said CCTV footage the petitioner was found present post the commission of the offence at a pump.

The report under Section 173(2) Cr.PC was submitted against Tarun, Moni @ Ashu, Arjun @ Harsh, Parveen @ Ritik, Sagar (petitioner), Shanky Pal, Gaurav Pal and Akshit Garg.

During the investigation, Tarun, Moni @ Ashu were found to be Juvenile and therefore, separate challans were filed against them before the Juvenile Justice Board, Yamuna Nagar. However, after conducting of a preliminary assessment with regard to the mental and physical capacity and their ability to understand the consequences of an offence and circumstances of the case, an order was passed under Section 18(3) of the Juvenile Justice Act to the effect that there was a need of the trial of the Tarun Kumar and Moni @ Ashu as adults. Therefore, their case was committed to the Court of Sessions.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. The name of the petitioner does not figure in the FIR but he has been arrested only on the basis of the disclosure statement of his co-accused which has no evidentiary value. In fact the complainant has named 09 assailants in the FIR with specific roles having been attributed to them. No test identification parade has been held in the present case. The complainant Shivali Sharma was examined as PW-5 and witness Krishan Boxer as PW-6 and none of the said witnesses have identified the petitioner. It is only a court observation as per which the petitioner, Gaurav and Shanky had been identified without naming them. The recovery of a danda was effected from the petitioner which has not been found to be bloodstained and would not inculcate the petitioner in the commission of the offence. The co-accused of the petitioner namely Tarun Kumar had already been granted the concession of bail by this Court.

As the petitioner was in custody since 16.09.2021 but only 07 of the 35 Pws

had been examined so far, the trial of the present case was not likely to be concluded anytime soon and therefore, he was entitled to the concession of bail more so when he had clean antecedents with no other case registered against him.

4. The Counsel for the State on the other hand while referring to the reply dated 05.11.2023 contends that all the accused including the petitioner assaulted the deceased Surya who was found to have suffered 17 injuries on his person. The evidence collected so far including the CCTV footage of the place of occurrence would show that the petitioner was a part of the unlawful assembly. Pursuant to the arrest of the petitioner a danda was recovered from him. Therefore, he was not entitled to the concession of bail. He however concedes that the petitioner is not named in the FIR or during the course of investigation by Krishan Boxer and even during the course of the Trial the identity of the petitioner has not been affixed properly as per the complainant Shivali Sharma PW-5 and witness Krishan Boxer PW-6. He also concedes that co-accused Tarun Kumar has been granted the concession of bail and that the petitioner was a first time offender in custody since 16.09.2021 and only 07 of the 35 Pws had been examined so far.

5. I have heard the learned counsel for the parties.

6. Admittedly, the petitioner was not named in the FIR but his name has been mentioned in the disclosure statement of his co-accused. Even during the course of the Trial the witnesses have not properly identified the petitioner. A co-accused though a juvenile treated as an adult namely Tarun Kumar has been granted the concession of bail. The petitioner is otherwise a first time offender, in custody since 16.09.2021 and only 07 of the 35 Pws had been examined so far. Therefore, the Trial of the present case is not likely to be concluded anytime soon. In this situation the further

incarceration of the petitioner is not required.

9. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-**Sagar** son of Sh. Jagdish Kumar is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

10. The petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

March 21, 2024
Vinay