

CRM-M-57326-2023

2024:PHHC:018234

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

205

CRM-M-57326-2023

Date of Decision : February 09, 2024

AJAY KUMAR @ AJAY MALHOTRA @ AJAY UK

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. G.S.Simble, Advocate for the petitioner.
Mr. Digvijay Nagpal, AAG, Punjab.

KULDEEP TIWARI, J. (Oral)

1. This is the second regular bail application filed under Section 439 Cr.P.C., the first one was dismissed as withdrawn on 4.8.2023.

2. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.03 dated 7.1.2021, under Sections 307, 324, 323, 148, 149 IPC, (Sections 326, 325 IPC added lateron) and under Sections 25/27 of the Arms Act, 1959, registered at P.S. City Batala, Police District Batala, District Gurdaspur.

2. The instant FIR, was registered on a complaint made by Gomji Kalyan (injured-complainant), with the allegations that on 03.01.2021, at about 7.30 PM, he and his elder brother Bharat Kalyan were going towards the office of their father. When they were going from street, from opposite side, the present petitioner, Chetan, Ajit Pal, Raman, Himanshu, Jashan, Jimmi, Dhruv, Tushar alias Ghulla, Dishant, Rajinder Kumar alias Bunty, Amit, Harsh and Davish, all armed with

Datars and Joginder, Rakesh, Kunal and Karan alias Bhabbar in front of their house. Joginder Pal and Rakesh Kumar raised *Lalkara* to catch the sons of Jatinder Kalyan and to kill them. On seeing all the accused, the complainant turned back from the spot and the present petitioner gave a Datar blow to the complainant with an intention to kill him, which hit on the back left side of complainant's head, and further accused-Chetan gave another Datar blow to the complainant, which hit on right side of complainant's head. In the meantime, accused-Himanshu took out pistol from his Dub and gave a blow from the butt of the pistol to the complainant, which hit on complainant's nose, accused-Jashan gave a blow of Datar, from reverse side, which hit on the complainant's left bicep, accused-Jimmy gave a blow with reverse side of Datar, which hit on complainant's left elbow, accused-Dhruv gave a Datar blow, which hit on complainant's right bi-cep, accused-Tushar alias Ghulla gave a Datar blow, which hit the complainant below his right knee, accused-Raman gave a Datar blow, which hit the complainant below his left knee, accused-Kunal gave fist and kick blows to the complainant and accused-Ajay took out pistol from his Dub and pointed the same towards his brother Bharat Kalyan. The accused, namely, Himanshu, Dishant, Rajinder Kumar alias Bunty, Amit, Harsh, Davish and Karan alias Bhabbar caused serious injuries to his elder brother with their respective weapons with an intention to kill him. Then accused-Himanshu pointed his pistol towards complainant's brother. They both fell down on the ground due to the injuries and all the above said accused ran away from

the spot, alongwith their respective weapons, while raising Lalkaras, considering the complainant and his brother as dead.

3. The allegations as levelled against the petitioner in the instant FIR, are that he has given a *datar* blow on the vital part of the body of Gomji Kalyan-injured/complainant i.e. on his head with intention to kill him, which had hit on the backside of the head of the complainant. The said injury was declared grievous in nature.

4. The learned counsel for the petitioner, while drawing the attention of this Court to order dated 4.6.2021 (Annexure P-4), passed by a Co-ordinate Bench of this Court in CRM-M-22290-2021, submits that the injury attributed to Himanshu was grievous in nature and the said injury was declared to be dangerous to life, but he was extended the relief of anticipatory bail. He also placed reliance upon order dated 7.10.2021 (Annexure P-5), passed by a Co-ordinate Bench of this Court in CRM-M-33820-2021, whereby, co-accused Chetan has also been granted the benefit of regular bail, who is at parity with the present petitioner.

5. Learned State counsel on instructions imparted to him by ASI Iqbal Singh, submits that in the instant case, total 11 accused have been arraigned on the complaint made by the complainant and out of 11 accused, 10 have already been extended the relief of either anticipatory bail or regular bail. He further informs this Court that the present petitioner was earlier declared as a proclaimed offender, and thereafter, he was arrested in the instant FIR on 11.3.2023. As per the learned State counsel, the charges in the instant case have already been framed by the learned trial Court concerned on 11.5.2023 and out of 25 witnesses cited

by the prosecution in the final report, as filed under Section 173 Cr.P.C., no witness has been examined till date. The learned State counsel has not disputed the fact of granting bail to co-accused Himanshu and Chetan.

6. Considering the fact that the present petitioner has suffered sufficient incarceration, as he is behind the bar since 11.3.2023, and the other co-accused, namely, Chetan and Himanshu have already been granted the concession of bail especially when the injury which invited the offence punishable under Section 307 IPC, this Court deems it appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. The petitioner is ordered to be released on bail on furnishing of bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

7. However, it is clarified that if in future, the petitioner is found indulging in commission of similar offences, as are involved herein, the respondent-State shall be at liberty to make an appropriate application seeking cancellation of regular bail, as granted by this Court. Moreover, anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petition only.

February 09, 2024
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No