



CRM-M-32825-2024

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

217-2

CRM-M-32825-2024

Date of decision: 20.01.2025

Shiva

...Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Namit Khurana, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG Haryana.

Mr. Sanyam Khetarpal, Advocate for the complainant.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 439 of the Cr.P.C., 1973 for grant of regular bail to the petitioner in case bearing FIR No.532 dated 12.09.2022, registered for the offences punishable under Sections 302, 323, 325, 34 and 120-B of IPC at Police Station City Jagadhri, District Yamuna Nagar.

2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

“The copied document is as follows. Monu Khan S/o Mustaq Khan Ambasi Muslim H. NO. 592 Manohar Colony Jagadhri Police Station City Jagadhri District Yamunanagar Age 24 years Said that I am a resident of the above name address and work as a labourer. Shia, Sachin etc. fight with my friend Harvinder alias Kantu a few days ago and they hurt Kantu. There was a rivalry going on between my friends Kantu and Shiva, Sachin over this issue. Due to this, Kanhaiya Lal alias Vikram Baba, resident of Manohar Colony, started telling me that you should get the matter compromised between these two parties so that no one gets harmed. Due to this, on 11.09.22 at around 10.35 PM in the night, I my friends Chetan, resident of Ganga Nagar Colony, had gone to Manohar Colony near Shiva and Sachin's house, where on the instigation of Kanhaiya Lal alias



Vikram, Shia, Sachin, resident of Manohar Colony and Bajrangi immediately attacked with their weapons in their hands. All three of them attacked me with intention to kill me, my friend Chetan ran away in fear as soon as he saw them and Sachin attacked me fatally on both my legs with the rod he held in his hand and Shiva hit me in the head with the pointed rod he held in his hand. Bajrangi had attacked with the intention of killing me. Bajrangi had hit me on both my arms with the iron held in his hand. They all, together have made a fatal attack on me, breaking both my legs and arms, and inflicting severe injuries on my head and body. I also got hit a lot on other parts of my body and I started shouting loudly, then seeing the people coming at the spot, all the above mentioned three boys ran away from the spot along with their weapons, then my elder brother Akbar, after getting the information, came to the spot from where I was found injured. I was picked up and brought to Civil Hospital Trauma Center Yamuna Nagar for treatment, where I am admitted to the hospital for treatment. You take the strictest legal action against Shiva, Sachin, Bajrangi, these three killed me on the instigation of Kanhaiya Lal alias Vikram. Has attacked with the intention of. Killing them on the investigation of Kanhaiya Lal alias Vikram I have written my note to you in front of my brother Akbar.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 17.09.2022. Learned counsel has further submitted that all private prosecution witnesses have been examined and thus, there is no allegation against the petitioner interfering in the substantial prosecution evidence. Learned counsel has further iterated that, victim namely Monu Khan (before his death) had made a statement to the police culling out therein a specific role of the petitioner having caused injuries to him, however, the statement recorded by the deceased (Monu Khan) was when the deceased (Monu Khan) was not in a fit medical state to make statement. In this regard, learned counsel for the petitioner has referred, *in extenso*, to the testimony of Dr. Shubham Lagyan (PW-9) as also ASI Jasmer Singh (PW-6). Thus, regular bail is prayed for.



4. Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature. Learned State counsel has referred to short reply by way of affidavit of Rajesh Kumar, Deputy Superintendent of Police, Yamuna Nagar-II, relevant whereof reads as under:

“4 That on the basis of aforesaid statement of injured Monu Khan and MLR, present FIR No. 532, dt. 12-09-2022, u/s 323, 325, 307, 34, 120-B IPC was registered at Police station City Jagadhri. After registration of case, investigation was carried out. During course of investigation, statement of witnesses were recorded, place of occurrence was inspected.

5 That due to injuries sustained in the aforesaid occurrence, the injured Monu Khan died, so section 302 IPC was inserted and section 307 IPC was deleted. The proceeding u/s 174 Cr.P.C. was conducted and after getting the postmortem conducted, dead body of deceased Monu Khan was handed over to his relatives. The photocopy of postmortem report is enclosed herewith as Annexure R-2.

6 That co-accused Sachin and Shiva, Harish alias Bajrangi (petitioner) were arrested on 17-09-2022 and accused Kanhiya was arrested on 18-09-2022.

7 That the petitioner and above named accused persons were interrogated and they admitted the offence committed by them. The petitioner was interrogated and he admitted the offence committed by him and disclosed that he along with his friend Sachin, Shiva and Shivam Kamboj caused the occurrence and murder Monu Khan. The petitioner also disclosed that he had attacked with iron rod, which was brought by him from the house of Shiva, on the hands of deceased Monu Khan with intention to kill him. The true translated copy of discloser statement of petitioner is enclosed herewith as Annexure R-3.

8 That the accused Sachin as per his disclosure statement got recovered iron rod, the accused Shiva as per his disclosure statement got recovered sharp point iron rod. The petitioner as per his disclosure statement got recovered iron rod which was used in the offence. The true translated copy of recovery memo is enclosed herewith as Annexure R-4.

9- That during course of investigation, Akbar s/o Mustak Khan handed over a pen drive on 06-10-2022 containing three videos of the occurrence



and also handed over a DVD. In one video, a person is seen coming near Aactiva scooter standing in the street, in second video the injured Monu Khan is seen lying on land and it is seen that his left leg has seen fractured and in third video, the injured Monu Khan seen lying on land. The said pen drive and DVD were taken into police possession.

xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx

13 That after completing the investigation challan was submitted against petitioner and co-accused on 09-12-2022. The charges have been framed against petitioner and co-accused u/s 120- B, 323, 325, 302, 34 IPC on 20-02-2023. In the present case there are total 22 prosecution witness and out of them 9 (nine) prosecution witness have been examined. Now the case is fixed for 26-09-2024 for PWS.

14 That no other criminal case has been found registered against petitioner.”

Learned State counsel has raised submissions in tandem with the status report and has sought for rejection of the petition in hand.

5. I have heard learned counsel for the rival parties and have perused the available record.

6. The grant of bail falls within the discretionary domain of the court; however, such discretion must be exercised in a judicious and principled manner, ensuring it aligns with established legal precedents and the interests of justice. While considering a bail application, the court must evaluate factors such as the existence of prima facie evidence implicating the accused, the nature and gravity of the alleged offence, and the severity of the likely sentence upon conviction. The court must also assess the likelihood of the accused absconding or evading the due process of law, the probability of the offence being repeated, and any reasonable apprehension of the accused tampering with evidence or influencing witnesses. Additionally, the character, antecedents, financial means, societal standing, and overall



conduct of the accused play a crucial role. Furthermore, the court must weigh the potential danger of bail undermining the administration of justice or thwarting its due course. A profitable reference in this regard is made to the judgment passed by the Hon'ble Supreme Court titled as ***State through C.B.I. vs. Amaramani Tripathi, 2005 AIR Supreme Court 3490***, relevant whereof reads as under:

14. *It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail (see ***Prahlad Singh Bhati v. NCT, Delhi, 2001(2) RCR (Criminal) 377 (SC) :2001(4) SCC 280*** and ***Gurcharan Singh v. State (Delhi Administration), AIR 1978 Supreme Court 179***). While a vague allegation that accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in ***Kalyan Chandra Sarkar v. Rajesh Ranjan, 2004(2) RCR (Criminal) 254 (SC) :2004(7) SCC 528*** : "The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:*

a. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.



b. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

*c. Prima facie satisfaction of the **court** in support of the charge. (see **Ram Govind Upadhyay v. Sudarshan Singh, 2002(2) RCR (Criminal) 250 (SC) : 2002(3) SCC 598 and Puran v. Ram Bilas, 2001(2) RCR (Criminal) 801 (SC) : 2001(6) SCC 338.**)*

This Court also in specific terms held that :

*"the condition laid down under section 437(1)(i) is sine qua non for granting bail even under section 439 of the Code. In the impugned order it is noticed that the High **Court** has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."*

*In **Panchanan Mishra v. Digambar Mishra, 2005(1) Apex Criminal 319 : 2005(1) RCR(Criminal) 712 (SC) : 2005(3) SCC 143**, this Court observed :*

"The object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in the heinous crime..... It hardly requires to be stated that once a person is released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the deceased victim and also create problems of law and order situation."

7. The petitioner is accused of committing a capital offence and is facing trial therein. A perusal of the statement got recorded by the victim Monu Khan, before his death, falling within the ambit of a dying declaration, unequivocally attributes an active role to the petitioner inflicting injuries that



culminated in deceased's demise. The arguments advanced on behalf of the petitioner regarding the evidentiary value of such a statement, in light of alleged inconsistencies in the testimonies of Dr. Shubham Lagyan (PW-9) and ASI Jasmer Singh (PW-6), does not warrant meticulous scrutiny by this Court at this stage. Such contentions pertain to evidentiary appreciation; which squarely falls within the domain of the trial Court. The perceived discrepancies or contradictions in the prosecution's evidence, cannot be looked into at this stage. Delving deep into alleged inconsistencies at this stage, undermines the judicial process, and is an attempt at pre-empting the findings of the trial Court. Such considerations are matter strictly reserved for the stage of trial and not for this court to be looked into at this stage.

7.1. Indeed, the petitioner has suffered incarceration for about 02 years and 04 months but the same factum by itself is not sufficient to extend the concession of regular bail to the petitioner, particularly, in light of the fact that there is nothing to arrive at the conclusion that trial is getting unduly delayed. The mere duration of incarceration, standing alone, does not constitute a compelling ground for the grant of regular bail, especially in light of the gravity of the allegations and the evidence on record. Furthermore, as per the custody certificate, the petitioner is stated to be involved in one more case (i.e. FIR No.456 dated 08.08.2022 under Sections 34, 148, 149, 325, 326, 506 of IPC at Police Station City Jagadhri, Yamuna Nagar. Accordingly, this Court is of the considered opinion that the petitioner does not deserve the concession of regular bail.

8. In view of the seriousness of the allegations coupled with the nature of evidence as also the antecedents of the petitioner, this Court is of



the considered opinion that the petitioner is not entitled to the concession of regular bail. Accordingly, the petition is, thus, devoid of merits and is hereby dismissed.

9. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and the investigating agency as also the trial Court shall proceed further, in accordance with law, without being influenced with this order.

10. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

January 20, 2025
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No