



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

282

CRM-M-45356-2024 (O&M)

Date of Decision: 17.01.2025

OMDUTT SAINI

....Petitioner

VERSUS

STATE OF HARYANA

....Respondent

CORAM : HON'BLE MRS. JUSTICE MANISHA BATRA

Present : Mr. Kunal Dawar, Advocate for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana.

Mr. Zorawar Singh Chauhan, Advocate for the complainant.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner seeking concession of regular bail in case arising out of FIR No.176 dated 01.10.2023 under Sections 148, 149, 302, 323, 324, 379-B, 452, 506 of IPC (Sections 325, 120-B, 201 of IPC added later on) registered at Police Station Tigaon, Faridabad, Haryana.

2. The adumbrated facts as emanating from the record are that the aforementioned FIR was registered on the basis of a complaint got lodged by the complainant Rajesh on 01.10.2023 leveling allegations that the persons named therein had formed membership of an unlawful assembly on the same day and in the prosecution of common object thereof, had entered into his house while being armed with weapons and had opened an assault upon his family members and himself. They had caused injuries to his father Prabhunath also. Some articles and money kept in the house of the



complainant were also taken away. His father was taken to the hospital along with other injured but succumbed to his injuries. The motive as attributed was election rivalry as well as loss of the crop of the complainant party being caused by the accused as on 29.09.2023 by leaving open their cattle in the fields of the complainant. Investigation proceedings have been initiated. The present petitioner was not named in the FIR or in the statements of the material witnesses recorded under Section 161 of Code of Criminal Procedure (for short '*Cr.P.C.*') and he was nominated as an accused on the basis of disclosure statement suffered by the co-accused Mohit & Ravinder @ Kallu. He was arrested on 07.12.2023. Investigation qua him and some other accused stands concluded and challan has been presented. The petitioner had moved an application for grant of regular bail which had been dismissed by the Court of learned Additional Sessions Judge vide order dated 05.02.2024.

3. It is argued by learned counsel for the petitioner that he was neither named in the FIR nor by the injured in their respective statements recorded under Section 161 of Cr.P.C, had named him or attributed any role to him. No specific injury has been attributed to him by either of the victims. Injury to deceased had not at all attributed to him. Even in the disclosure statements of the co-accused, no specific role has been attributed to him. The subject offences have not been made out against him at all. The complainant along with injured Guddi who is wife of the deceased in a representation (Annexure P-9) as filed before the police on 16.11.2023 had specifically admitted that the petitioner was not involved in the incident.



Even in the statement got recorded by Guddi before the news anchors/media persons, she had stated that the petitioner was innocent. The said statement had been video recorded and the pendrive (Annexure P-11) contains the details of the same. The disclosure statement allegedly suffered by the co-accused and himself has no evidentiary value and cannot be considered admissible in evidence. No weapon has been recovered from him and the motorcycle allegedly recovered from him, is his own vehicle and recovery thereof does not amount to any incriminating evidence. Trial is likely to take time. His case is even at better footing with the case of the co-accused Mohit who has since been extended benefit of regular bail. With these broad submissions, it is urged that he deserves to be released on bail.

4. Status report has been filed by respondent-State. It is submitted therein by learned State counsel assisted by learned counsel for the complainant and has argued that there are serious allegations against the petitioner as he by forming a membership of an unlawful assembly with the co-accused, had opened a murderous assault upon the complainant and his family members and has caused the homicidal death of the victim Prabhunath i.e. the father of the complainant. Serious injuries were caused to others members of the family of the complainant. There is nothing on record to show that there would be undue delay in conclusion of the trial. There are chances of the petitioner's intimidating the witnesses or absconding, if extended benefit of bail. The representation (Annexure P-9) had not been submitted by the complainant and injured Guddi. Accordingly, it is urged that petitioner does not deserve to be extended benefit of bail.



5. I have heard learned counsel for both the parties and considerable length and have gone through the record carefully.

6. As per allegations, the petitioner and the co-accused hatched a plan to assault the family of the complainant on 01.10.2023 and then formed an unlawful assembly. Further in prosecution of common object of that unlawful assembly, they opened an assault upon the complainant and his family members and caused injuries to them. In the FIR, as many as 16 assailants were named. The petitioner was not named therein. Even in their statements recorded under Section 161 of Cr.P.C., copies of which have been placed on record, neither the complainant nor witnesses namely Gunjan and Swati had made any mention qua presence of the present petitioner. The name of the present petitioner was firstly disclosed by the accused Ravinder@Kallu and Mohit in their respective disclosure statements after their arrest. Copies of these statements have been placed on record as Annexure P-6 & P-7 and on a perusal thereof, it is revealed that the above named accused disclosed that the present petitioner and some other accused had hatched a conspiracy by gathering in a milk diary in the morning of 01.10.2023. Neither in these statements nor in the disclosure statement of present petitioner, any specific overt act has been attributed to him.

7. Further, the petitioner has also placed on record Annexure P-9 which is a copy of letter shown to have been jointly signed by the complainant and his mother Guddi to the police wherein the fact that the present petitioner was not involved in the incident and was innocent, is shown to have been mentioned. Though, the learned counsel for the complainant has



submitted that no such letter has been written by the victims but at the same time a pendrive containing a video recording of the statement shown to have been recorded by the victim Guddi i.e. the mother of the complainant Rajesh, while addressing the media persons has also been placed on record. The above said video has been played in a computer of this Court and contents of the video has been watched and heard wherein the mother of the complainant/wife of the victim is clearly heard to be saying that present petitioner was innocent. During the course of arguments, learned counsel for the complainant has not been able to controvert the authenticity of contents of the video contained in the pendrive (Annexure P-11). In view of the above discussed facts and circumstances when the petitioner had not been named in the FIR or in the statement of witnesses recorded under Section 161 of Cr.P.C. and has been nominated as an accused on the basis of disclosure statements of co-accused and in view of statement recorded by wife of the deceased before media persons, the period of incarceration of the petitioner and the attendants facts and circumstances but without meaning to make any comment on the merits of the case, lest the same prejudices to the trial, I am of the considered opinion that petitioner deserves to be released on bail.

8. Accordingly, the petition is allowed and the petitioner is ordered to be admitted to bail subject to his furnishing personal/surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned and subject to the conditions that during the pendency of the trial, the petitioner shall not try to make any contact with either of the members



of the complainant party/prosecution witnesses and shall not extend any inducement, threat or promise to them and shall not leave the country without the permission of the Court.

9. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with law.

10. Since the main petition has been allowed, pending application, if any, is rendered infructuous.

17.01.2025

Deepak Patwal

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No