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

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CRM-M-41315 of 2024 (O&M)

DATE OF DECISION :- 14.01.2025

Avi Malhotra and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. R.S. Rai, Senior Advocate
with Mr. Anurag Arora and Ms. Prachi Gupta, Advocates
for the petitioners.

Mr. Anup Singh, AAG, Punjab.

Mr. L.S. Lakhanpal, Advocate for the complainant.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 483 of BNSS, 2023 for grant of regular bail to the petitioners in case bearing FIR No.146 dated 10.07.2023, registered for the offences punishable under Sections 341, 323, 148, 149 (Sections 307, 325 added later on) of IPC at Police Station Kharar, District S.A.S. Nagar (Mohali).

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

“Copy of statement, statement of Vikramjit Singh @ Vicky son of Balwant Rail, resident of Ward No. 9, Street Janeja Rice Mill Rania, Sirsa, P.S. Rania, Sirsa, District Sirsa, Haryana at present resident of Tenant in Flat No. 432, Top Floor, Noor Homes, Sector 115, Santemajra, Mohali, P.S. Sadar Kharar,



District SAS Nagar, aged about 32 years, Mobile No. 99917-10959, 9872221213. Stated that I am resident of above mentioned address and I am running a cloth shop in Village Sahi Majra. Today in the night, myself and my friend Ajay Kumar son of Balwinder Kumar resident of Village Barkatpur, P.S. Julka, District Patiala, at present resident of Tenant in Flat No. 356, Sector 116, SBP North Valiey Santemajra, P.S. Sadar, Kharar, District SAS Nagar, in Vehicle No. CH01-CB-5444, Make Scorpio, color Cream color, were going to our house from Mohall, then the vehicle was being driven by my friend Ajay Kumar son of Balwinder Kumar above. I was sitting on his adjoining seat in the front. When we reached in between Kharar and Santemajra, then 2 vehicles were going ahead of us, my friend Ajay Kumar driver by blowing the horn of his vehicle, passed his vehicle ahead of them and we turned our car towards the house of our friend Amandeep Singh Sandhu's Flat No. 0269, A SBP City of Dreams and were going inside the society then at about 12.30 a.m., then the driver of one vehicle by moving his vehicle in front of our vehicle, surrounded it and one more vehicle was moved behind our vehicle. Then my friend Ajay Kumar stoped his above vehicle then I opened the window of my side and came out, then from the vehicle in front, 4-5 persons came out, whom I asked that why have you stopped your vehicle in front of our vehicle then those persons started giving me beatings without any reason and started saying that you by moving your vehicle ahead of our vehicle have splashed water on us then my friend Ajay Kumar was rescuing me from them then from their second vehicle standing on back of our vehicle, 3-4 persons came out, who started giving beatings to my friend Ajay Kumar and we raised alarm of "Maar ta Maar ta", then in the meanwhile the persons residing in the society, on listening to our noise, came out, in the mean while drivers of both the vehicles by making their accomplice sit in the vehicles tried to run away their vehicles, I



read their vehicle numbers as UP 25 CU 5064 Make Baleno and number of the other vehicle HR 90 B3585, make Swift, color white. We both were trying to stop the Baleno vehicle bearing no. UP 25 CU 5064, then the driver of the Baleno car by accelerating his vehicle hit upon me and dragged me to long distance and I fell down, while I was lying down, drove the above numbered vehicle over my legs, arms, due to which I suffered injuries on my right leg, left arm and other body parts and the driver of the other vehicle HR 90 B 3585, Make swift and the persons sitting in the same, left the vehicle at that place in SBP City of Dream. Due to suffering injuries, I was feeling much pain and was uneasy. Looking at my condition, my friend Ajay Kumar and other persons of the society made arrangement of the vehicle and got me admitted in a private hospital at Sohana for treatment. The doctors of the Sohana hospital after giving me first aid had referred me to PGI Chandigarh, where I am under treatment. I do not know the drivers of both the vehicles and the unknown persons sitting in the same, can identify if brought before me. Appropriate legal action be taken against the unknown drivers of the above vehicles and unknown persons sitting in the same. Got recorded the statement, heard it, read it, it is correct. Sd/- Vikramjeet, attested statement sd/- Ajay Kumar, sd/- Jaswinder Singh 9872221213. Attested: Gurdeep Singh ASI P.S. Sadar Kharar, Dated 10.07.2023. Police proceedings: today I ASI was present in the Police station then Head Munshi police station told that a telephonic call has been received from PGI Police post that Vikramjit Singh @ Vicky son of Balwant Rai, resident of Ward No. 9, Street Janeja Rice Mill, Rania, Sirsa, Police Station Rania, District Sirsa, Haryana at present resident of tenant at Flat No. 432, Top Floor, Noor Homes, Sector 115, Santemajra, Mohali, Police Station Sadar, District SAS Nagar, is admitted in PGI for treatment due to fight, asked to take action. On which I ASI, along with ASI Keval Krishan, Deep Gagan Singh



No. 1917, reached at PGI Chandigarh for obtaining the statement of Vikramjit Singh @ Vicky. Where for Chobtaining the statement of the injured, written opinion was obtained from the SMO Sahab. SMO Sahab wrote the injured to be fit for statement. Upon which, I ASI went near the bed of the injured and obtained the statement as per his dictates, which were written and read over, who after accepting his above statement to be correct, put his signatures below the statement in English and the verification of the statement was done by Ajay Kumar son of Balwinder Kumar above friend of injured and injured's relative Jaswinder Singh, who also put their signatures in English. Which were attested by me ASI, from the statement offence under Section 341, 323, 148, 149 IPC, was found to be made out. Upon which by reducing into writing for registration of the case against 7-8 unknown persons sitting in Car bearing no. HR 90 B 3585, Car Swift and other car No. UP 25 CU 5064, Baleno make, the same is being sent to the police station by hand through Constable Deepgagan Singh No. 1917/SAS Nagar. After registration of the case, number of the case be informed. I ASI along with fellow officials is going tot eh spot for conducting investigation and upon obtaining the medical record of the injured, offences will be added. Within PGI Chandigarh at 8:30 p.m. attested Gurdeep Singh ASI P.S. Sadar Kharar Dated 10.07.2023, on receiving the present statement the above mentioned case under above offences was registered against 7-8 unknown persons sitting in car No. HR 90 B 3585, car Swift and other car no. UP 25 CU 5064, Baleno make, record was completed. Copies of FIRs through post will be sent to the Illaka Magistrate Sahab Kharar and senior officers. Information is being given to Cincharge control room Mohali through telephone. By handing over the original statement and FIR to Constable Deepgagan Singh No. 1917/SAS nagar, the same is being sent to the concerned investigating officer SI



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Gurdeep Singh. Munch of police station was directed to complete the record.”

3. Learned Senior counsel for the petitioners has submitted that the petitioners were initially arrested on 20.07.2023 and were released on the same day as the offences removed at that time against them were bailable in nature. Thereafter, the offence under Section 325 of IPC was added on 16.09.2023 which was further enhanced to offence under Section 307 of IPC on 09.10.2023. Thereafter, the petitioners were arrested on 01.07.2024. Learned Senior counsel for the petitioners has submitted that there have been no allegations against the petitioners for misuse of the bail granted to them, in respect of bailable offences, when they were released from custody on 20.07.2023. Learned Senior counsel for the petitioners has argued that the petitioners have been falsely implicated into the FIR in question. It has been further iterated by learned Senior counsel for the petitioners that injuries suffered by the victim are actually out of an accident having taken place which have been given the colour of a criminal case on account of malafide. Learned Senior counsel has further iterated that the offence of Section 307 of IPC is not made out from the manner of the alleged occurrence as also the injuries alleged to have been suffered by the victim. In this view of the matter, learned counsel has prayed for grant of regular bail.

4. Learned State counsel has opposed the present petition arguing that the allegations raised against the petitioners are serious in nature and thus the petitioners do not deserve the concession of the regular bail. Learned State counsel seeks to place on record custody certificates dated 13.01.2025 & 14.01.2025 of petitioners No. 1 and 2 in Court, which are taken on record.



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5. Learned counsel for the complainant has vehemently opposed the grant of regular bail to the petitioners by arguing that there are clear direct allegations against the petitioners. Learned counsel for the complainant has further iterated that the offence under Section 307 of IPC is in fact made out from the factual matrix of the case.

6. I have heard counsel for the parties and have gone through the available records of the case.

7. The petitioners were initially arrested on 20.07.2023 for bailable offences and were accordingly released on the same day. Thereafter, upon invoking of Section 325 of IPC on 16.09.2023 and thereafter invoking of Section 307 of IPC on 09.10.2023, the petitioners were arrested on 01.07.2024. The challan has already been presented on 07.09.2024. Total 21 prosecution witnesses have been cited and charges are yet to be framed. Therefore, it is indubitable that the conclusion of trial will take its own time. The rival contention of learned counsel for the parties; as to whether the petitioners have been falsely implicated into the FIR in question, whether the injuries on the body of the victim have taken place on account of a accident and whether the offence under Section 307 of IPC is made out from the factual matrix of the case; gives rise to debatable issue which shall be ratiocinated upon during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioners absconding from the process of justice or interfering with the prosecution evidence. As per custody certificates dated 13.01.2025 & 14.01.2025 filed by learned State counsel, both petitioner No. 1-Avi Malhotra and petitioner No. 2-Sushil Kumar have

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suffered incarceration for a period of 06 months and 10 days & are not shown to be involved in any other case.

Suffice to say, further detention of the petitioners as an undertrial is not warranted in the facts and circumstances of the case.

8. In view of above, the present petition is allowed. Petitioners are ordered to be released on regular bail on their furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the petitioners shall remain bound by the following conditions:-

- (i) The petitioners shall not mis-use the liberty granted.
- (ii) The petitioners shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioners shall not absent themselves on any date before the trial.
- (iv) The petitioners shall not commit any offence while on bail.
- (v) The petitioners shall deposit their passports, if any, with the trial Court.
- (vi) The petitioners shall give their cell-phone numbers to the Investigating Officer/SHO of concerned Police Station and shall not change their cell-phone numbers without prior permission of the trial Court/Illaqa Magistrate.
- (vii) The petitioners shall not in any manner try to delay the trial.

9. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the

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State/complainant shall be at liberty to move cancellation of bail of the petitioners.

10. Ordered accordingly.

11. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

14.01.2025

P.Singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No