

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 1069 of 2009.

Date of decision: *December 31, 2009.*

Rajinder Kumar

.....Petitioner.

Vs.

State of H.P.

.... Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?

**For the petitioner : Mr. Bhupinder Ahuja, Advocate vice
Mr. Chaman Negi, Advocate .**

For the Respondent : Mr. R.P.Singh, Asstt. Advocate General.

Kuldip Singh, Judge (Oral).

This is an application under Section 439 Cr.P.C. for releasing the petitioner on bail in F.I.R. No. 92 dated 14.9.2009 registered at Police Station, Lambagaon, District Kangra, under Sections 341, 323, 504, 326, 307, 34 IPC. The status report has been filed.

2. Heard and perused the record. On behalf of the petitioner, it has been submitted that petitioner has been arrested on 4.11.2009 in the above case. The custodial interrogation of the petitioner is not required. The petitioner has not been named in the FIR. The allegations against the co-accused Kapil Dev were almost same, but he has been released by learned Addl. Sessions Judge, Kangra. The petitioner is serving in Indian Army and his continuous

Whether the reporters of the local papers may be allowed to see the Judgment?

custody shall have adverse effect on his service. The petitioner has been implicated falsely in the case. The petitioner had filed bail application, which has been rejected by learned Addl. Sessions Judge (I), Kangra at Dharamshala on 25.11.2009. The petitioner is ready to furnish bail bonds in accordance with the directions of this court. The learned counsel for the petitioner has prayed for grant of bail.

3. The bail application has been opposed by the learned Assistant Advocate General. He has submitted that on 13.9.2009 an unknown person on telephone informed Police Station, Lambagaon that a person in injured condition is lying near petrol pump Alampur and he was being taken to CHC Sujanpur for treatment. On this ASI Pradeep Kumar and others reached Sujanpur. The statement of Anish Kumar was recorded under Section 154 Cr.P.C. He has stated that on 13.9.2009 he and Arun Rana came to Sujanpur, Lovely alias Lucky met them. Anu Sharma came there in his car. The complainant, Arun Rana and Lovely alias Lucky proceeded towards their respective homes in the car of Anu Sharma. At about 10.30 p.m., five-six boys were standing near petrol pump and it appeared that they had taken liquor, one of them was Kapil alias Pinja. They were standing in the middle of the road and they stopped the car. They started abusing the complainant and others. The complainant objected, Kapil alias Pinja gave a drat blow on the head of Lovely. The complainant intervened to save Lovely, but another person whom he recognizes gave sharp edged weapon blow on the head and back of the complainant and complainant fell down. On this, the case was

registered. The injured were got examined. In the MLC of Anish Kumar, four injuries were found and injury No. 1 was dangerous to life and was grievous. He was referred to Medical College, Tanda. On the person of injured Lovely, two injuries were found. Rajinder Kumar alias Kaku was arrested on 4.11.2009. Rajinder made disclosure statement under Section 27 of Evidence Act and got recovered khukhari. On completion of investigation, challan has been presented in the court. The learned Assistant Advocate General has prayed for dismissal of the bail application.

4. I have considered the submissions made on behalf of both the parties. The learned counsel for the petitioner has submitted that in the FIR, petitioner has not been named. The injured Anish Kumar in his statement under Section 154 Cr.P.C. has stated that five-six persons were standing at about 10.30 p.m. near petrol pump and they stopped the car. He has stated that one of them was Kapil alias Pinja. He has also stated that he can identify the others, but he does not know their names and one of them with sharp edged weapon gave blow on his head and back. The complainant Anish Sharma in his supplementary statement under Section 161 Cr.P.C. has named kaku alias Rajinder also. Arun Kumar Sharma in his statement, under Section 161 Cr.P.C., has stated that Kaku attacked Anish Kumar with sharp edged weapon, Lovely alias Lucky in his statement under Section 161 Cr.P.C. has also stated that Kaku son of Rattan Chand gave beatings to Anish Kumar with sharp edged weapon.

5. It is the case of investigating agency that petitioner had made disclosure statement under Section 27 of Evidence Act and got recovered khukhari. The injury No. 1 in the MLC of Anish was found grievous and injuries No. 2, 3 and 4 were simple. The injury No. 1 is also stated as dangerous to life. The learned counsel for the petitioner has submitted that accused Kapil has been granted bail, therefore, on the basis of parity the petitioner is also entitled to bail. The acts attributed to petitioner Rajinder alias Kaku are more serious. The petitioner is not entitled to benefit of bail granted to accused Kapil. The learned Assistant Advocate General has stated that third accused Sanjay has absconded and he has not been arrested till now. He has, however, filed bail application, under Section 438 Cr.P.C., which is still pending. The petitioner cannot take benefit of not mentioning of his name in the F.I.R. at this stage. The petitioner, according to his learned counsel is serving in the Indian Army, but the employment of petitioner in Army in itself is not enough to grant him bail at this stage in view of serious allegations against him. Consequently, the application is dismissed.

6. The observations made in the order are for the disposal of the bail application and shall have no bearing on the merits of the case.

December 31, 2009.
(Hem)

(Kuldip Singh),
Judge.