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

CRM-M-56708-2022
Date of Decision: 02.06.2023

Rahul @ Gandhi

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Rakesh Nehra, Senior Advocate assisted by
Mr. Reetesh Kumar, Advocate
for the petitioner.

Mr. Ram Kumar Singla D.A.G., Haryana.

HARSH BUNGER, J.

Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.154, dated 19.04.2021, registered under Sections 302, 201, 341 and 120-B read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC) and Sections 25, 27 and 29 of the Arms Act at Police Station Sadar, District Rohtak.

2. Reply by way of an affidavit of Sh. Yashpal Singh, HPS, Deputy Superintendent of Police, Rohtak has been filed on behalf of respondent/State of Haryana, which is already on record.

3. Custody certificate dated 24.03.2023 of the petitioner has been filed by the learned State counsel, which has been taken on record vide order

dated 27.03.2023.

4. Succinctly, the present FIR was registered on the complaint of one Rajbir s/o late Sh. Balwan Singh, wherein it was alleged that on 19.04.2021, at about 1:00 P.M., an information was received from mobile No.8397016244 of Hari Om (brother of the complainant) that near the Khidwali Gaushala, three unknown boys came on motorcycle and killed Hari Om (brother of the complainant) by firing gun shots. Thereafter, the complainant along with his brother-Manish reached the fields, near Gaushala and saw Hari Om lying dead and his body was covered with blood and he had gun shot marks on his body. Accordingly, the present FIR was registered.

5. Learned counsel for the petitioner submitted that the petitioner has been falsely implicated in the present case. It is submitted that the present FIR was got registered against three unknown boys and later on complainant submitted another complaint in which he mentioned names of three boys including present petitioner and the mother of the petitioner. Learned counsel for the petitioner submitted that he has nothing to do with the commission of the alleged offence. It is stated that one Mohit was planted as an eye witness and his statement was recorded, wherein it was stated that he was with the deceased just before the occurrence and he allegedly named four boys who were chasing the deceased in the fields with guns in their hands. As per the alleged statement of Mohit, he was the one who informed the complainant from the phone of the deceased, but when the complainant and his brother reached at the place of occurrence, nobody was found present near the dead body, which depicts that the complainant and his brother (Manish) in connivance with the Investigating Officer made a fake

witness (Mohit) of last seen. It is submitted that in fact the so called eye witness (Mohit) committed suicide on 28.04.2022 and an FIR stands registered in that regard. It is further stated that there was no eye-witness and all this has been done due to their personal grudge with the petitioner's family and the case is based on circumstantial evidence. Learned counsel submits that co-accused namely Meena, Sahil and Sonu whose names were mentioned in the second complaint have already been granted the concession of regular bail by this Court vide orders dated 03.08.2022, 24.08.2022 and 23.11.2022, respectively (Annexures P-5 to P-7). It is next submitted that the petitioner is in custody since 20.04.2021 and has undergone 01 year, 11 months and 01 day as on 24.03.2023. It is stated that investigation in the present case is complete; challan has been presented on 02.07.2021 and even charges have been framed. It is further stated that there are total 31 witnesses in the present case, out of which, only 02 witnesses have been examined till date and the trial is likely to take long time and no useful purpose would be served by keeping him behind the bars any further. Learned counsel for the petitioner submitted that the petitioner is not involved in any other case. It is submitted that the petitioner had applied for grant of regular bail before the learned Additional Sessions Judge, Rohtak which has wrongly been dismissed vide order dated 21.09.2022 (Annexure P-4). Learned counsel further submits that the petitioner herein is ready to abide by all the conditions as may be imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail is made.

6. Learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence, however, it is not disputed that the challan has been presented in this case

and even charges have been framed. Learned State counsel further submitted that the petitioner is involved in heinous offence of murder and he is not entitled to the concession of regular bail. It is submitted that in case, the petitioner is enlarged on regular bail then he may tamper with the evidence and influence the material witnesses or he may abscond and flee from justice which may delay the trial; accordingly, prayer for dismissal of the petition has been made.

7. I have heard learned counsel for the parties and perused the paper book, status report as well as the custody certificate of the petitioner handed over by learned State counsel.

8. The instant case relates to murder of one Hari Om (brother of the complainant). As per the status report, the doctor has mentioned the following injuries in the 'Postmortem Report' (Annexure R-1) :-

“(a) Firearm entry wound of size 0.8x0.8 cm on the left temple area situated 8cm from midline and 164cm above from left heel abraded collar of width vary from 0.2 to 0.3cm was present around the wound. Wound track was going from left to right. Slightly downward. Piercing the underlying bone, brain matter with meninges, underlying bone and exit as a firearm exit wound of size 1.5x1cm present near tragus of right ear situated 14cm from midline and 162cm above from right heel. In addition to wound track bony fractures, linear fracture involving the left temporal, left occipital, left frontal was present and linear fracture of right temporal bone were also present. Wound track was reddish and echymosed. Bony trabeculae shows blood infiltration at fractured sites.

(b) Reddish abrasion of size 3x1.5cm present on left side of forehead situated 4.5cm from midline and 1cm

above from left eyebrow of size 6x2cm present on left frontal area situated 5cm above from left eyebrow and 0.5cm from midline of size 8x4cm present just posterior to firearm entry wound of size 3x2cm present on left temporal area situated 6.5cm posterior to firearm entry wound and 10cm from midline, of size 2x1' .5cm present just below left eye of size 1x0.5cm present 1.5cm lateral to left eye and of size 2x1cm present on left zygomatic ridge area.

(c) A stab wound of size 2.3x1.3cm present on left side of lower back situated 12cm from midline and 123cm above from left heel. Wound margins were regular, clean cut. Reddish and echymosed. On further dissection and further exploration. Wound was going from posterior to anterior, piercing the 6th intercoastal space, pleural cavity and reached upto underlying lung with a clean cut wound of size 1.5x0.5cm. Cavity contains about 200ml. Blood.

(d) Incised wound of size 2x0.5cm present on left side of lower back situated 1cm from midline and 118cm above from left heel. Wound margins were regular, clean cut Reddish and echymosed. On further dissection, wound was superficial in nature.

(e) A stab wound of size 2.5x0.5cm present on left side of back situated 8cm from midline and 112cm above from left heel. Wound margins were regular. Clean cut, reddish and echymosed. On further dissection and further exploration. Wound was going from posterir to anterior. Piercing the underlying tissues and reached upto underlying messentry with a clear cut wound of size 1.2x0.3cm with surrounding echymosis in an area of size 7x5cm.

(f) Multiple reddish abrasions of size vary from 0.3x0.3cm to 4x2cm present on posterior aspect of both elbows. On posterior aspect of right elbow. On knuckles

of fingers of left hand, on anterior aspect of right knee and on lateral malleolus of left ankle.

As per post-mortem examination report, the cause of death is injuries and its complications.”

The aforesaid injuries demonstrate the manner in which Hari Om was brutally killed. It is stated that the mother of the petitioner namely, Meena, used to talk with Hari Om on mobile phone and on this account, the petitioner was nurturing grudge against Hari Om. During investigation, the petitioner along with other co-accused was arrested and the petitioner got recovered the motorcycle (HR-12AF-1957) and co-accused Meena produced her mobile phone with SIM No.8053431156 on which she used to talk with deceased Hari Om. As per status report, the petitioner had suffered a disclosure statement; whereupon, one pistol with two bullets, knife and pajama worn by him, at the time of alleged occurrence, were got recovered and even the place of occurrence was got demarcated. Further, as per the doctor's opinion about the knife recovered from the petitioner (Rahul), the possibility of injuries due to the said weapon, cannot be ruled out. The call detail records of mobile phone of Meena and Mobile No.8397016244 of deceased Hari Om, show that they were talking to each other frequently.

9. Petitioner is the main accused and although, he has been in custody since 20.04.2021 and the trial has commenced, wherein out of 31 witnesses, 02 witnesses have already been examined; however, in my considered opinion, he cannot be released on bail solely on the basis of long incarceration in jail or on the ground that the trial is not likely to be concluded in near future; especially when the petitioner is being tried for a serious and heinous offence of murder of one Hari Om (brother of the

complainant). In ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav, 2004(2) RCR (Criminal) 254***, Hon'ble Apex Court held as under:

"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 be 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."

10. Furthermore, when the accused is facing serious charges, he may develop temptation to jump the bail. The apprehension expressed by State that if released on bail, there is every likelihood of the petitioner trying to tamper with prosecution evidence by giving threats and inducements to the prosecution witnesses and absconding even to prolong the trial, cannot be brushed aside lightly.

11. Accordingly, the present petition under Section 439 Cr.P.C. seeking grant of regular bail to the petitioner (Rahul @ Gandhi) in case FIR No.154 dated 19.04.2021, under Sections 302, 201, 341 and 120-B read with Section 34 of the Indian Penal Code, 1860 and Sections 25, 27

and 29 of the Arms Act at Police Station Sadar, District Rohtak; is dismissed.

12. Nothing stated here-in-above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

13. Pending application/s, if any, shall also stand disposed of.

June 2nd, 2023
Himani

(HARSH BUNGER)
JUDGE

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