

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-13870 of 2015

Date of decision:20.05.2015

Sunil

.....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE DARSHAN SINGH

* * *

Present: Mr. Rakesh Nehra, Advocate for the petitioner(s).

Mr. Anmol Malik, Advocate for the respondent.

Mr. Anshuman Dalal, Advocate for the complainant.

DARSHAN SINGH, J.

Learned counsel for the petitioner has placed on file the uncertified copy of the statements of the material witnesses.

This petition has been filed under Section 439 of the Code of Criminal Procedure (hereinafter called the 'Cr.P.C') for grant of the regular bail in case FIR No.202 dated 16.6.2012 under Sections 364/302/201/34 of the Indian Penal Code and 25 of the Arms Act, registered at Police Station Meham, District Rohtak.

As per the prosecution allegations, on 14.6.2012, there was marriage of the son of Balraj. At about 8 P.M when 'Ghurchari' was taking place then the dispute took place between Parveen @ Lillu son of Satpal and his three friends with deceased Shamsheer. Said Parveen, Rakesh, Amit and Suresh forcibly took away deceased Shamsheer in a car at about 10 P.M. Complainant Ram Kumar and his son Rohtash tried to raise objection but they pushed them away and fled away taking Shamsheer

along with them in a white coloured Swift Desire. Later on, it was revealed that said Shamsher has been murdered. During investigation, the present petitioner was declared innocent but was summoned as an additional accused to face trial in Criminal Revision No.3799 of 2013 by the Coordinate Bench of this Court vide order dated 30.1.2015. The petitioner surrendered before the learned trial Court on 23.3.2015. His application for grant of regular bail has been dismissed by the learned trial Court. Hence, this petition.

Sh. Rakesh Nehra, Advocate, learned counsel for the petitioner, contended that the petitioner had no role to play in the present occurrence. The occurrence had taken place on 14.6.2012 at about 10 P.M but the report was lodged with the police on 16.6.2012 i.e after two days with due deliberations and consultations but even then in the FIR, no allegation was levelled against the present petitioner. The allegations in the FIR were only against Parveen @ Lillu, Rakesh, Amit and Suresh. He contended that only in the statement of Rohtash recorded on 16.6.2012 by the police for the first time the name of the petitioner figured and it was alleged that he was driving the car in which deceased Shamsher was forcibly taken away. He further contended that the story that victim Shamsher was forcibly taken away in the car being driven by the present petitioner is concocted and highly improbable. He contended that it is not believable that in the presence of so many persons attending the marriage function it would be possible for the accused to forcibly kidnap the victim. If that would had happened it is not believable that the father and brother of the victim would have remained mum for two days. If that would have been so, they must have immediately reported the matter to the police. He further contended that it is evident from the disclosure statements of the

co-accused that the petitioner had no role to play in the commission of the murder of Shamsher. The allegations regarding murder are against the other co-accused. Even the presence of the petitioner at the time of commission of murder has not been revealed by the co-accused in their disclosure statements. He further contended that thorough investigation was conducted by the senior police officers and the petitioner was found innocent. He contended that in fact the car in question was hired for the purpose of the marriage and the petitioner was only a driver on the said vehicle. He further contended that the petitioner was not related in any manner with the accused party. He had just gone there as a driver of the hired vehicle. The Deputy Superintendent of Police has categorically mentioned in his report that no implication of the petitioner was found in the commission of the present offence. The petitioner was only found to have taken his car in the marriage on fare. He contended that the petitioner is in custody for the last about 2 months. So, he deserves the concession of the regular bail.

On the other hand, learned State counsel pleaded that though the petitioner was found innocent in the investigation but has been summoned by this Court as an additional accused under Section 319 Cr.P.C to face trial. The offences are of serious nature.

Learned counsel for the complainant further contended that this fact is very much established that the present petitioner was driving the car in which deceased Shamsher was forcibly kidnapped with intention to murder. He contended that the petitioner could have refused to drive the car when the co-accused were forcibly taking away the victim. He contended that the petitioner was also sharing the common intention. Thereafter, the dead body of Shamsher was recovered. Thus, he

contended that the petitioner is not entitled for grant of bail.

I have duly considered the aforesaid contentions.

This fact is not disputed that the name of the present petitioner does not figure in the FIR. His name was for the first time revealed in the statement of Rohtash, the brother of the deceased, recorded on 16.6.2012. It is also not disputed that the present petitioner was declared innocent during investigation and has been summoned only under Section 319 Cr.P.C as an additional accused. The factual position put forward by the learned counsel for the petitioner that the vehicle driven by the present petitioner was hired for the purpose of the marriage has not been disputed by the learned State counsel on the basis of the investigation conducted by the Deputy Superintendent of Police, Meham. Learned counsel for the petitioner has also raised various other factual contentions discussed above which are quite debatable and requires consideration at an appropriate stage while appreciating the evidence.

The petitioner is in custody for the last about 2 months. He has already joined the trial. The plea raised by the learned counsel for the complainant that the present petitioner was sharing the common intention with the main accused who had actually committed the murder is again the matter of evidence. Thus, the present petitioner deserves the concession of bail.

In view of my aforesaid discussion, the present petition is hereby allowed. Accused-petitioner Sunil is ordered to be released on bail on furnishing of requisite bail bonds to the satisfaction of the trial Court/Duty Magistrate, Rohtak.

May 20, 2015
ps

(DARSHAN SINGH)
JUDGE

