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

CRM No.M-24108 of 2015

Date of Decision: 10.09.2015

Aas Mohammad @ Ashu

. . . Petitioner

Versus

State of Haryana

. . . Respondent

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Rakesh Nehra, Advocate
for the petitioner.

Mr. Anil Mehta, DAG, Haryana.

JASPAL SINGH, J. (Oral)

This is a second petition under Section 439 of the Code of Criminal Procedure preferred by petitioner, seeking regular bail in case FIR No.42 dated 10.02.2013, under Sections 302, 201, 120-B, 34 IPC, Police Station, Sadar Rohtak, District Rohtak.

2. The instant case stands registered on the basis of statement of Karambir Sarpanch of Village Bahuakbarpur. He made a statement to the police to the effect that on February 10, 2013 at about 07.15 a.m. he accompanied by Naresh son of Jogender Singh was going to the fields. When they reached Hisar-

Rohtak Road, near hand-pump, they spotted a dead body lying on *kacha* portion of the road. On seeing dead body, the same appeared to be of an army man. He has suspected that some unknown persons due to some unknown grudge have committed the murder of an unknown person by way of strangulation and threw the dead body to destroy the evidence. It was on the basis of his statement, the investigation was put into motion. During investigation of the case, statements of Narain son of Bhim Singh, Shakuntla wife of Jai Pal Singh (mother of deceased) and Bijender (brother of deceased) were recorded who got identified the dead body to be that of Satish son of Jai Pal Singh. The dead body was got subjected to autopsy. After completion of the investigation, challan was presented to the Court of learned Jurisdictional Magistrate. Subsequently, the case was committed to the Court of Session for trial.

3. The contention of the petitioner is that after the dismissal of the previous petition preferred by the petitioner, the statements of the prosecution witnesses Narain, Shakuntla, and Bijender have been recorded and they did not utter even a single word showing the involvement of the petitioner. Even the name of the petitioner did not figure in the FIR. No specific role has been attributed to him by the aforesaid witnesses. Infact from the testimonies of Narain and other witnesses, it reveals that Ms.Sudesh wife of deceased-Satish was having illicit relations with one Naveen, who is a frequent visitor to her house.

4. Learned counsel for the petitioner further contends that co-accused of the petitioner, namely; Paviter, whose case was also on same footings, has already been granted concession of bail by this Court vide order dated July 7, 2015. The petitioner is suffering incarceration since 13.03.2013, undertakes to abide by all the terms and conditions imposed by this Court in case he is granted the concession of bail.

5. On the other hand, learned State counsel has strongly opposed the petition as well as various submissions made by learned counsel for the petitioner and contends that previous petition preferred by the petitioner has already been dismissed on merits and there is no material change in the circumstances. As such, petitioner does not deserve the concession of bail.

6. This Court has given an anxious thought to the submissions made by learned counsel for the parties and have perused the record.

7. Undoubtedly, FIR in this case was registered against unknown persons at the instance of Karambir, Sarpanch. During investigation, statements of Narain son of Bhim Singh, Shakuntla wife of Jai Pal Singh and Bijender were recorded by the police. Neither at the time of recording of their statements under Section 161 Cr.P.C., they have levelled any allegation against the petitioner nor they were stated to be present at the spot and even their statements have already been recorded during trial of the case. Perusal of the statements of Narain and others, there is nothing to

connect the petitioner with the crime. The allegations unfolded by them are only qua Naveen and Ms. Sudesh, otherwise, name of the petitioner only emerged in the disclosure statement of Naveen. It is a debatable question whether the disclosure statement alleged to have been suffered by Naveen co-accused of the petitioner is admissible in evidence or what is its evidentiary value. The petitioner is suffering incarceration approximately for the last 2-½ years. The disposal of the challan would likely to take sufficient time.

8. Taking into consideration the aforesaid aspects of the case, but without expressing any opinion on the merits, this Court is of the considered view that a case is made out for the grant of concession of bail. Accordingly, petition is allowed and petitioner is ordered to be released on bail at the satisfaction of Ld. trial Court/Duty Magistrate, Rohtak.

9. It is made clear that any observation made in this order shall have no binding effect on the merits of the main case and observation, if any, has been made for limited purpose i.e. disposal of the instant petition.

[JASPAL SINGH]
JUDGE

10.09.2015
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