

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

**CRIMINAL MISC. M NO.5489 OF 2017
DATE OF DECISION: MAY 10, 2017**

Rakesh

.....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Aditya Sanghi, Advocate,
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana,
for the State.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court, praying for grant of regular bail on the ground that allegations in the FIR cannot sustain against him in the light of the fact that two out of the three eye witnesses, namely, Chand Ram and Pony both sons of deceased Krishna Devi (PW1 and PW2 respectively) have resiled and declared hostile by the prosecution. Even in the cross-examination, nothing has come out, which would implicate the petitioner. Another alleged eye witness Anil, whose name is not mentioned in the FIR, was present at the spot when the occurrence had taken place. That apart, he asserts that as per the prosecution despite best efforts made by them, they have not been able to procure the presence of Anil despite issuance of non-bailable warrants for the said purpose as the same have

been received back unexecuted in the light of the fact that he is accused in some other case and is absconding. He contends that the petitioner is in custody since 19.10.2015 and the trial is not likely to conclude soon as the only left out eye witness, Anil, is not traceable. Continuation of the petitioner in custody would not in any manner enhance the interest of justice. Prayer has, thus, been made for accepting the prayer made by the petitioner.

On the other hand, counsel for the State could not dispute the fact that the presence of prosecution witness, Anil, could not be procured despite having been issued non-bailable warrants. She, however, states that although two witnesses have turned hostile but as per the post mortem report, death of Krishna Devi had occurred because of stabbed injury and the knife which has been recovered at the behest of the petitioner, has been opined by the doctor to be the likely weapon of offence. She, therefore, prays for dismissal of the petition.

I have considered the submissions made by counsel for the parties and with their assistance have gone through the file.

The factum that the petitioner is in custody since 19.10.2015 is not disputed as also the fact that two main eye witnesses, who were sons of deceased Krishna Devi, have resiled. Therefore, the petitioner cannot be put in a situation despite there being no fault on his part, moreso when the third eye witness is not produced by the prosecution despite various dates having been granted by the trial Court to procure his presence even on issuance of non-bailable warrants, which have been received back unexecuted. Trial is not likely to conclude soon.

Therefore, without going into the merits of the case, the petition

is allowed and the petitioner is ordered to be released on bail to the satisfaction of Trial Court/Duty Magistrate, Jind

May 10, 2017
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No.