

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

**CRM-M No.14000 of 2018
Decided on: 19.07.2018**

Sumit

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. Vikrant Rana, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this second petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.104 dated 11.03.2016, for offence punishable under Sections 148, 149, 186, 302, 307, 333, 353, 120-B, 212 of the Indian Penal Code (in short 'IPC') and 25(54) of the Arms Act, registered at Police Station Gannaur, District Sonapat.

The first petition seeking regular bail to the petitioner was dismissed being not pressed vide order dated 20.01.2017 passed in CRM-M No.45194 of 2016. The present petition is filed after recording of evidence of the complainant and other private witnesses.

Counsel for the petitioner has submitted that as per the allegation in the FIR, 11 persons were named for the murder of Vikas @ Dudhiya. It is further submitted that it has come in the FIR that some

unidentified persons have done *recci* in a Fortuner car bearing registration No.HR-10X-4444, for the last 02 days preceding the date of incident. It is also submitted that in the FIR, the complainant – Ved Pal has also stated that on 09.03.2016, he had met his deceased brother namely Vikas Dudhiya, who has told him that Sandeep Barwasni along with certain other persons are conspiring to kill him and even at that stage, the name of the petitioner did not surface.

Counsel for the petitioner has further submitted that after 05 months, a statement under Section 161 Cr.P.C. was recorded, in which one Satender, cousin of deceased – Vikas @ Dudhiya has stated that the petitioner was also involved in the conspiracy and thereafter, the petitioner was arrested. It is also submitted that in the statement of the complainant – Ved Pal, who appeared as PW2 and in the statement of Ram Pal and another cousin of the deceased, who appeared as PW1, they have deposed on the line of the version given in the FIR and have not named the petitioner.

Counsel for the petitioner has further argued that the aforesaid Satender, who had named the petitioner in his statement, recorded under Section 161 Cr.P.C., was examined as PW7 and has stated that the petitioner was not present there and he has not even named him in the statement made before the police.

Counsel for the petitioner has referred to the statement of this witness where the Public Prosecutor made a request to declare this witness as hostile with regard to the allegation against the petitioner and in the cross-examination conducted by the Public Prosecutor, this witness has stated that he do not know the petitioner personally and has

not named him before the police, in his statement. When confronted with the statement Ex.PW7/A, he has stated that he has never made such statement before the police that on 11.09.2016, the petitioner – Sumit along with other persons, mentioned in his statement, hatched a conspiracy and arranged the murder of Vikas @ Dudhiya.

Counsel for the petitioner has further argued that the widow of deceased – Vikas @ Dudhiya, appeared as PW8 and has only stated that she has seen a Fortuner car bearing registration No.HR-10X-4444, roaming in the area of Court Complex, in which some persons were sitting and she had identified only one accused i.e. Sandeep Barwasni and further stated that this fact was narrated to her by the complainant – Ved Pal.

Counsel for the petitioner has further submitted that the petitioner is in judicial custody since 08.07.2016 and he is being tried in the aid of Section 120-B IPC, qua which the prosecution has led the entire evidence, as noticed above.

Counsel for the State, on instructions from ASI Sanjay Kumar, assisted with counsel for the complainant, has stated that the petitioner is the registered owner of the vehicle bearing registration No.HR-10X-4444, which was found involved for the purpose of conducting the *recci*.

In reply, counsel for the petitioner has submitted that it has come in the disclosure statement of the petitioner itself that the co-accused Ravi had borrowed the vehicle from the petitioner on 04.03.2016 for going to Haridwar with his friend and the vehicle was returned on 12.03.2016 and at that time, the said co-accused – Ravi has

informed the petitioner that he has even used the vehicle for conducting a *recci* and then they had gone to Haridwar.

Counsel for the petitioner has also submitted that except in the aforesaid evidence, there is no other evidence, which has come on record and it will be a debatable issue whether the petitioner has participated actively in the conspiracy or not.

Without commenting anything on merits of the case and considering the fact that the petitioner is in judicial custody since 09.07.2016 as per the Custody Certificate, filed in the Court today; he is not found involved in any other case and also in view of the fact that PW7 – Satender has been declared as hostile with regard to the allegation levelled against the petitioner, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail, if the petitioner is found involved misusing the concession of bail, in any manner.

19.07.2018
yakub

(ARVIND SINGH SANGWAN)
JUDGE

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