

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

CRM-M-19008 of 2018

Date of Decision: 28.08.2018

Roshan Singh

....Petitioner

Versus

State of Haryana

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. J.S. Bedi, Sr. Advocate
with Mr. Sunil Kumar, Advocate
for the petitioner.

Mr. Manish Dadwal, A.A.G., Haryana.

Mr. Zorawar Singh, Advocate
for the complainant.

DAYA CHAUDHARY, J.

Petitioner-Roshan Singh has filed the present petition under Section 439 Cr.P.C for grant of regular bail to him in case FIR No.114 dated 08.09.2017 registered under Sections 148, 149, 302, 323, 458, 285, 460 IPC and Sections 25/27 of the Arms Act at Police Station Nathusari Chopta, District Sirsa.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas, he was not involved. Neither his name is mentioned in the FIR nor any specific role has been attributed to him. The petitioner has been implicated on the basis of disclosure statement made by one Arvind Kumar Kundu, who was arrested on 23.09.2017. Learned counsel also submits that the alleged recovery of *lathi* has been shown to be effected from possession of the petitioner by the

police which is false one. Even none of the prosecution witness has given any attribution to the petitioner. As per disclosure statement, only a single blow of *lathi* has been shown to be given by Subhash @ Channi (non-petitioner) and there is no repetition of *lathi* blow. As per postmortem report, no opinion has been given about the cause of death by the doctor as simply it has been mentioned that the opinion regarding cause of death will be given after the Chemical Examiner's Report. Petitioner is in custody since 02.10.2017. Challan has been presented against the petitioner and three other co-accused. There is no other case pending against the petitioner and only the charge has been framed and no witness has been examined so far. The trial may take long time to conclude and no useful purpose would be served by keeping the petitioner behind bars.

Learned State counsel has not disputed the custody period as well as stage of trial and also the fact that the petitioner has been implicated on the basis of disclosure statement made by co-accused. It is also not disputed that the name of the petitioner was not mentioned in the FIR.

Heard the arguments of learned counsel for the petitioner and have also perused the contents of the FIR as well as other documents available on the file.

It is well settled that at pre-conviction stage, there is presumption of innocence and object of keeping a person in custody is to ensure his availability to face trial and to receive sentence that may be passed. Purpose of detention is not supposed to be punitive or preventive. The delay in commencement and conclusion of trial is an important factor which is required to be taken into consideration and as such the accused cannot be kept in custody for indefinite period in case the trial is not likely

to be concluded within reasonable time. This view has been observed by Hon'ble the Apex Court in cases ***Kalyan Chandra Sarkar vs. Rajesh Ranjan 2005(1) R.C.R. (Criminal) 703, State of U.P vs Amarmani Tripathi 2005(4) RCR (Criminal) 280, State of Kerala vs Raneef 2011(1) RCR (Criminal) 381 and Sanjay Chandra vs CBI 2011(4) RCR (Criminal) 898.***

By considering the role of the petitioner as nowhere his name is mentioned in the FIR but he has been implicated on the basis of disclosure statement made by co-accused Arvind Kumar Kundu; the disclosure statement has no evidentiary value in the eyes of law; the petitioner is in custody since 02.10.2017 and even a single witness has not been examined so far; the fatal/grievous injury caused to deceased was attributed to co-accused Subhash @ Channi and even in the disclosure statement, a single blow of *lathi* has been attributed to the petitioner which shows that there was no intention to kill the deceased, the present petition is allowed and the petitioner-Roshan Singh is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court subject to following terms and conditions :-

- (i) that the petitioner shall be present before the trial Court on each and every date as and when required;*
- (ii) that he shall not, directly or indirectly, make any inducement, threat or promise to any witness of the case;*
- (iii) that he shall not leave India without prior permission of the Court;*
- (iv) that he shall abide by any other terms and conditions to be imposed by the trial Court.*

However, it is made clear that any observation made here-in-above, shall not be construed as an expression of opinion on the merits of

the case during the period of trial.

28.08.2018
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No