

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

**CRM-M-24046-2018
Date of decision: 13.11.2018**

Sudhir

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. S. S. Mor, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

This is the third petition that has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 78 dated 19.04.2017, under Sections 307, 34, 201, 120-B and 325 of the IPC and Section 25/54/59 of the Arms Act, registered at Police Station Bass, District Hisar.

The first and second petitions were dismissed as withdrawn, vide orders dated 19.12.2017 and 02.04.2018, passed in CRM-M Nos. 43171 of 2017 and 3489 of 2018, respectively.

Learned counsel for the petitioner submits that the FIR in question was registered on the statement of complainant-Mehender with the allegations that two unknown persons came on a motorcycle and fired gun shots towards the complainant which hit on his arm and leg and the FIR was registered against the unknown persons.

Learned counsel for the petitioner further submits that thereafter the police recorded the statement of Rajbir, real brother of

complainant Mehender, who stated that one Raju s/o Rajpal, used to visit the family of Ex-Sarpanch of the village, Suresh and one Birkha and they were in touch with each other on mobile phones and he had full faith that the incident in which gun shots were fired upon Mehender, aforesaid Raju was responsible and, therefore, the family of Suresh and Birkha be interrogated to find out who has fired gun shots.

Learned counsel for the petitioner further submits that thereafter, supplementary statement of Rajbir was recorded on 08.06.2017 in which he stated that in a Panchayat convened earlier, he had raised doubts on the family of Birkha and now it is clear in the Panchayat that grandson of Birkha, namely Sudhir (petitioner), used to give information about the movements of complainant Mehender to Raju, who was residing in Australia.

Learned counsel for the petitioner further submits that with the aforesaid allegations, the petitioner was involved in the present FIR and he is in judicial custody since 17.06.2017 and out of total 36 prosecution witnesses, only 02 witnesses, i.e. complainant Mehender and SI Satbir, have been examined so far.

Learned counsel for the petitioner has referred to the statement of PW-1 Mehender, wherein during cross-examination, he has stated as under:

“Police recorded my statement twice. I do not remember that after how many days my second statement was recorded. I had not got mentioned in my both statements that Sudhir son of Satbir had given information about my location to Ricchpal alias Makkar son of Balwant and Raju to kill me. I also did

not disclose in my both the statements recorded before the police that Sudhir was interesting in going to Australia as his uncle Raju is living in Australia who hatched all the conspiracy. This fact was disclosed by Rajbir my brother after ten days of the occurrence. I did not approach the police for recording my statement about the involvement of Sudhir in this case. This fact was told by me first time in the court on 19.4.2018, when my statement was recorded. Self stated that my brother Rajbir told the police. When Rajbir disclosed this fact, I was not present. It is incorrect to suggest that I have deliberately named Sudhir due to party faction of the village.”

Learned State counsel, on instructions from ASI Rawat Singh, has, however, submitted that as per the call details, the location of the petitioner was there in the village on the day of occurrence and during investigation, it has come that co-accused Raju has sent some amount to one Gautam, who has been cited as a prosecution witness, and the same was given to Vijender, who fired gun shots upon the complainant. It is further submitted that said Vijender is also in judicial custody and is facing trial.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the facts that petitioner is in judicial custody since 17.06.2017; he is not involved in any other case; his name was not mentioned in the FIR in the first instance and his name surfaced only when supplementary statement of Rajbir, who is not an eye-witness, was recorded; in the cross-examination of the complainant, it has come that he has not approached the police for recording of his statement about involvement of the petitioner and also in

view of the fact that conclusion of trial is likely to take a long time as out of total 36 prosecution witnesses, only 02 have been examined so far, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

November 13, 2018

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No