

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

**CRM-M-37314-2018
Date of decision: 26.10.2018**

Narinder Mandhok

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Nandan Jindal, Advocate
for the petitioner.

Mr. M. S. Nagra, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 158 dated 28.04.2017, registered under Sections 302/34 of the IPC and Section 25/27/54/59 of the Arms Act, registered at Police Station Zirakpur, District S.A.S. Nagar (Mohali).

Learned counsel for the petitioner submits that while granting regular bail to co-accused Sushil Malik on 01.08.2018 in CRM-M-42041-2017, the following order was passed:

“Prayer in this 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.158 dated 28.04.2017, for offence punishable under Sections 302/34/120-B of the Indian Penal Code (in short 'IPC') and 25/27/54/59 of the Arms Act, registered at Police Station Zirakpur, District S.A.S. Nagar Mohali. Learned Senior Counsel for the petitioner has submitted that as per the allegation in the FIR, which was got registered by one Mahavir Parsad Jain, father of deceased – Ajay Jain, it is stated that on 27.04.2017, he received a phone call

from his younger son that 03 unknown persons riding on a motorcycle have fired a bullet shot on his son – Ajay Jain and he has taken him to Civil Hospital, Sector 6, Panchkula and on reaching there, he found that his son – Ajay Jain has died. Later on, the police recorded the statement of Ashish Jain as well as a supplementary statement of the complainant – Mahavir Parsad Jain. In the supplementary statement, it was stated by Mahavir Parsad Jain that his son – Ajay Jain was having a shop in Baltana and one Rohit Mandhok was also having a mobile shop in the same vicinity and there was a business rivalry between the deceased son of the complainant – Ajay Jain with Rohit Mandhok and he, in conspiracy with one Amit Bhura, who is lodged in Patiala Jail, would have killed his son – Ajay Jain. Thereafter, the police arrested the aforesaid Amit Bhura on 26.07.2017 and during his interrogation, he made a disclosure statement that the petitioner – Sushil Malik has helped him in committing the said offence and the petitioner was also nominated as an accused in the present FIR. Learned Senior Counsel for the petitioner has further argued that the petitioner is in judicial lock up since 06.08.2017 and the statement of the complainant – Mahavir Parsad Jain, has been recorded in the Court and this witness, while appearing as PW1, has stated that he do not know who committed the murder of his son and he had no enmity with the accused person present in the Court and he even do not have any dispute with Rohit Mandhok and his father Narinder Mandhok, who are his neighbour. This witness has failed to identify the petitioner in the Court along with the other co-accused and stated that he had seen them for the first time in the Court. This witness was later on, declared hostile by the Public Prosecutor and in cross-examination, he has even denied giving his supplementary statement dated 23.07.2017 as noticed above and further stated that he has not made any such statement despite being confronted with the said statement. In further cross-examination by the Public Prosecutor for identifying the petitioner by name, he has refused to identify him and has denied the suggestion that he is intentionally not identifying the petitioner. Learned Senior Counsel for the petitioner has further submitted that the eye-witness i.e. brother of the deceased PW2 – Adish Jain, while deposing on oath before the Court, has also refused to identify the petitioner, though, he has stated that he could identify the assailant, who fired shot on his brother but stated

that the accused present in the Court are not the said persons/assailants. Thereafter, this witness was also declared hostile. Learned Senior Counsel for the petitioner has also argued that the petitioner is a Constable serving in Indian Army and he has set up a defence that as per the certificate issued by the Commanding Officer, where he is serving, he was on duty on 27.04.2017 when the incident has taken place. It is further submitted that the only evidence against the petitioner is the disclosure statement of Amit Bhura and it will be seen during the course of trial whether the same is admissible against the petitioner or not as the same is not even made part of the report under Section 173 Cr.P.C. Counsel for the State, on instructions from HC Chamkaur Singh, has not disputed the fact that the disclosure statement of Amit Bhura is not part of the report under Section 173 Cr.P.C. and has also not disputed the fact that both PW1 and PW2 have not supported the prosecution version and have not identified the petitioner. It is further submitted that out of 38 prosecution witnesses, only 03 PWs have been examined so far. Without commenting anything on merits of the case and considering the fact that the petitioner is in judicial lock up for a period of about 01 year; the eye-witness has failed to identify the petitioner and also considering the fact that the disclosure statement of the coaccused – Amit Bhura on the basis of which the petitioner was nominated in the present FIR, is not part of the report under Section 173 Cr.P.C. and also considering the fact that conclusion of the trial will take some time, this petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds and 02 sureties to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.”

Learned counsel for the petitioner further submits that even subsequent to that, on 10.08.2018, another witness PW-4 was examined who has stated that he does not know anything about the incident and he has not recorded any statement before the police. This witness has further stated that he does not identify the accused persons present in the Court and when he was declared hostile and cross-examined by the public prosecutor, he has even denied the statement made before the police that on 11.08.2017,

petitioner Narinder Mandhok had come to him and disclosed that deceased Ajay Jain was shot dead by three persons on 27.04.2017.

Learned counsel for the petitioner further submits that petitioner is in judicial custody since 12.08.2017 and he is not involved in any other case.

On the last date of hearing, learned State counsel was directed to file a specific affidavit if the petitioner is involved in any other case or not as it was noticed in the order of Additional Sessions Judge on 14.08.2018 that the petitioner is a hard core criminal.

In pursuance to the aforesaid direction, affidavit of DSP (I), District S.A.S. Nagar has been filed in Court today and in the affidavit, it is stated that as per the information received from four police stations, where the known addresses of the petitioner were given (report is attached with the affidavit as Annexure R-1 Colly.), Incharge, PS-Zirakpur and SHO, PS-Ambala Cantt. have stated that the petitioner is not involved in any other case. Even as per the custody certificate, filed in Court today, the petitioner is not involved in any other case and he is in custody since 12.08.2017.

Learned State counsel, on instructions from HC Chamkaur Singh, submits that out of total 38 prosecution witnesses, 04 have been examined so far and it will take some time in conclusion of the trial.

I have heard learned counsel for the parties.

Without commenting anything on merits of the case and considering the fact that the petitioner is in judicial custody since 12.08.2017; co-accused of the petitioner has already been granted concession of regular bail as noticed above and also considering the fact

that conclusion of the trial is likely to take some time, this petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds and 02 sureties to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned.

It is made clear that during the pendency of the trial, the petitioner will not visit the place of resident/place of business of the complainant/witnesses and it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found misusing the concession of bail, in any manner.

October 26, 2018

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No