

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

210

CRM-M-38549-2018

Date of Decision: September 18, 2018

Talib

.....Petitioner(s)

versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Altaf Hussain, Advocate for the petitioner.

Mr. D.R. Singla, DAG, Haryana.

Sudhir Mittal, J. (Oral)

The petitioner-Talib son of Jan Mohd, seeks regular bail in FIR No.471, dated 03.09.2015, registered at Police Station Punhana, under sections 148, 149, 323, 452, 302, 307 IPC and section 25 of the Arms Act, 1959.

2. The allegations in the FIR shows that there was a fight between two groups of persons. During the fight, the petitioner allegedly shot deceased person namely Imtayaz, who lost his life.

3. Learned counsel for the petitioner submits that three sisters of deceased Imtayaz have not blamed the petitioner in their statements recorded under section 164 Cr.P.C.. The statement of Doctor recorded before the trial Court is also at variance with the claims of the prosecution inasmuch as it has been stated by him that the entry and exit wound of deceased- Imtayaz show that the bullet was fired from a lower level whereas the allegation against the petitioner is that he was standing on the second floor of a building and Imtayaz was standing on first floor

of a neighbouring building. The evidence on record contradicts the case of the prosecution and thus, the petitioner deserves to be granted regular bail.

4. The prayer is opposed by learned State counsel, who submits that as per the statement of the complainant, petitioner committed the murder of deceased-Imtayaz. Aas Mohd.-PW3 has also supported the statement of the complainant. The weapon of the offence has also been recovered from the petitioner. He further submits that case is fixed for defence evidence and thus, the petitioner is not entitled to grant regular bail.

5. The arguments of learned State counsel that the case is now fixed for defence evidence is rebutted by learned counsel for the petitioner by submitting that the petitioner was a proclaimed offender and thus, his trial is being held separately. In his trial, only 13 prosecution witnesses have been examined out of 39 and therefore, the trial is not likely to be concluded at an early date. It is also submitted that Aas Mohd.- PW3 is the real uncle of Irfaan, the person named as the perpetrator of the crime by the sisters of the deceased person and therefore, he was bound to support the case of the prosecution. Regarding the recovery of weapon from the petitioner, it is submitted that in the remand papers prepared at the time of sending the petitioner to judicial custody, there is no mention of any recovery and thus, the recovery alleged to have been made from the petitioner is doubtful.

6. As on date, it appears that recovery of weapon of offence from the petitioner has not been established clearly. Witnesses, who are related by blood to the deceased person, have not named the petitioner as the perpetrator of the crime. It is not in dispute that Imtayaz died during a fight between two groups of people and thus, it cannot be said with any amount of certainty that the petitioner was the person responsible for his death. There is no other case pending against the

petitioner and no useful purpose would be served by keeping the petitioner in custody indefinitely.

7. In view of the above, this petition is allowed and the petitioner- Talib son of Jan Mohd. is ordered to be released on bail on his furnishing bail and surety bonds to the satisfaction of learned trial Court concerned at Mewat.

September 18, 2018
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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No