

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

CRM-M No.41510 of 2018

Date of Decision: 23.10.2018

Mushtaq and another

....Petitioners

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 petitioners.

Mr. D.K. Mittal, D.A.G., Haryana.

Mr. Sahil Gupta, Advocate
for Mr. N.S. Shekhawat, Advocate
for the complainant.

DAYA CHAUDHARY, J.

Petitioners, namely, Mushtaq and Ranjeet @ Billa have approached this Court by way of filing the present petition under Section 439 Cr.P.C for grant of regular bail to them 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, 1959 at Police Station Nathusari Chopta, District Sirsa.

Learned senior counsel for the petitioners submits that the petitioners have falsely been implicated in the case, whereas, they were not involved. The names of the petitioners were not mentioned in the FIR and no specific roles were attributed to them. The petitioners have been implicated on the basis of disclosure statement made by co-accused

Arvind Kumar Kundu, who was arrested on 23.09.2017. Learned counsel also submits that the alleged recovery has falsely been shown to be effected from the possession of the petitioners. None of the witnesses has stated that any role has been played by the petitioners. Even as per disclosure statement, only a single blow of lathi has been given by main accused 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. Simply, it has been mentioned that the opinion with regard to cause of death would be given after receipt of Chemical Examiner's Report is received. The petitioners are in custody since 29.09.2017. Challan has been presented against the petitioners and co-accused. There is no other case against them. Charges have been framed and even a single witness has not been examined so far. The trial may take long time to conclude and no useful purpose would be served by keeping the petitioners behind bars.

Learned State counsel has not disputed the custody period as well as stage of trial and also the fact that the petitioners have been implicated only on the basis of disclosure statement made by co-accused. Even it has not been disputed that the names of the petitioners were not mentioned in the FIR.

Heard the arguments of learned counsel for the parties 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.***

The names of the petitioners are neither mentioned in the FIR nor they have played any role. They have been implicated on the basis of disclosure statement made by co-accused Arvind Kumar Kundu which has no evidentiary value in the eyes of law. The petitioners are in custody since 29.09.2017 and even a single witness has not been examined so far; the fatal/grievous injury caused to deceased has been attributed to co-accused Subhash @ Channi and even as per disclosure statement, a single blow of *lathi* has been attributed to the petitioners which shows that there was no intention to kill the deceased, the present petition is allowed and petitioners- Mushtaq and Ranjeet @ Billa are directed to be released on regular bail on their furnishing bail/surety bonds to the satisfaction of the trial Court subject to following terms and conditions :-

- (i) that the petitioners shall be present before the trial Court on each and every date as and when required;*
- (ii) that they shall not, directly or indirectly, make any inducement, threat or promise to any witness of the case;*
- (iii) that they shall not leave India without prior permission of the Court;*

(iv)that they 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.

23.10.2018
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No