

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

**CRM-M No.42041 of 2017 (O&M)
Decided on: 01.08.2018**

Sushil Malik

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Dr. Anmol Rattan Sidhu, Sr. Advocate
with Mr. Shiv Kumar Sharma, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

CRM No.26068 of 2018

Heard.

Allowed as prayed for.

Copy of the statements of PW1 to PW3 are taken on record
as Annexures P5 to P7.

CRM-M No.42041 of 2017

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 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 co-accused – 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, 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.

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.

(ARVIND SINGH SANGWAN)
JUDGE

01.08.2018
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No