

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

207

CRM-M No.45679 of 2017

Date of Decision: April 27th, 2018

Rakesh Kumar @ Poppi

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sant Pal Singh Sidhu, Advocate
for the petitioner.

Mr. Kuldeep Singh, Senior Deputy Advocate General, Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Prayer in this petition is for grant of regular under Section 439 of the Code of Criminal Procedure, 1973, in FIR No.167 dated 28.07.2013 registered at Police Station Kapurthala City, District Kapurthala, under Sections 302, 148, 149 IPC and Section 25 of the Arms Act, 1959 and under Sections 150 & 120-B IPC.

It is the contention of learned counsel for the petitioner that although in the FIR, it has been stated that the petitioner was armed with a pistol and had used the same to fire upon deceased-Manoj Kumar alias Deepa but the eyewitness Asha Rani wife of Vijay Kumar, who is the mother of the deceased, has in the Court while giving her statement, stated that the petitioner was present at the spot. It is not even mentioned that the petitioner was armed with any weapon or had taken any active part in the commission of the offence. Petitioner is in custody since 29.09.2016. He further states that no recovery has been effected from the petitioner. The trial is not likely to conclude in near future and, therefore, petitioner be granted the concession of bail.

Learned counsel for the State, on the other hand, contends that

the petitioner was one of the conspirators and was also present at the time of commission of the offence. He, however, on instructions from ASI Varinder Singh, could not dispute the assertion of the counsel for the petitioner with reference to the statement given by PW-2 Asha Rani wife of Vijay Kumar in Court. He contends that the petitioner be not granted the concession of regular bail.

Earlier the case was taken up for hearing on 20.02.2018, when the case was adjourned to 27.03.2018 for examination of the complainant. On 27.03.2018, the case was again adjourned for today for the same purpose. Today the counsel for the State, on instructions, has stated that the complainant is not traceable. There are 33 witnesses, out of which only seven witnesses have been examined. The trial is not likely to conclude in near future and as per the statement of PW-2 Asha Rani, except for the presence of the petitioner at the spot and may be the conspiracy, there is no active role attributed to the petitioner in the actual commission of the offence. No recovery has also been effected from the petitioner nor has he been stated to be armed with any weapon by Asha Rani.

In view of the above facts and circumstances, the present petition is allowed.

Petitioner is directed to be released on bail to the satisfaction of the trial Court.

Any observations made hereinabove shall not be taken into consideration for any purpose except for the decision of the present petition.

April 27th, 2018

Puneet

(AUGUSTINE GEORGE MASIH)

JUDGE