

CRM-M-2924-2019

Date of decision: February 20, 2019

Arvinder

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**Present:** Mr. Digvijay Nagpal, Advocate
for the petitioner.

Ms. Harpreet Kaur, DAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer made in this petition is for grant of regular bail to the petitioner in case FIR No.513 dated 9.12.2015 under Sections 302, 34 IPC and 25 of the Arms Act (further added Sections 304, 285, 109 of IPC and 30 of the Arms Act) registered at Police Station Indri, District Karnal.

Learned counsel for the petitioner submits this is the second application for grant of regular bail to the petitioner, the first one was withdrawn on 14.3.2018. Thereafter, the prosecution has recorded the statement of all the material witnesses, who have not supported the prosecution version. Counsel for the petitioner submits that vide order dated 20.12.2018 passed in CRM-M-25057 of 2018 while granting regular bail to the co-accused Pardeep Kumar, the following order was passed :-

“Affidavit of Superintendent of Police, Karnal along with the statement of PW-17 Mohtaram has been filed in Court today.

A perusal of the statement of PW-17 Mohtaram shows that this witness has stated that he has seen the accused, who were present in Court, and has not identified them as the

persons who have fired a shot on the complainant party. Learned counsel for the petitioner has, thus, submitted that the complainant has not identified the petitioner.

Learned counsel for the petitioner further submits that co-accused Suresh has already been granted concession of regular bail, vide order dated 28.07.2017 passed in CRM-M-26031-2017. The operative part of the order reads as under:-

“Learned counsel for the petitioner has submitted that as per the averments in the FIR, on 09.12.2015 in the night at about 01:00 A.M., the complainants were travelling in a canter from Nawanshehar to their village in Uttar Pradesh for the purpose of casting their votes. It is further alleged in the FIR that it was heavy fog in the night and the canter went to Bhanu Kheri towards the mining area of sand instead of Yamuna Ghat and when they reached near T point at Bhanu Kheri, suddenly firing from the side of fields started and one Khushnood son of Shamshad was hit with a bullet injury and he died at the spot. It is also alleged that Parvesh, Ahsaan and Ali Hassan also sustained bullet injuries. The police later arrested the petitioner, a Constable in Haryana Police who was assigned the duty of a Driver in official vehicle Tata Sumo along with one Constable Ravinder who was having his SLR and they were on guard duty. Learned counsel for the petitioner has submitted that as per the allegation in the FIR, no specific role has been attributed to the petitioner as it was dense fog and dark at 01:00 A.M. in the night when the alleged occurrence has taken place. Learned counsel has further submitted that the petitioner was only a Driver and was not assigned with any arm and ammunition in his official capacity,

therefore, he has not caused any injury to deceased – Khushnood. It is further submitted on behalf of the petitioner that as per the post-mortem report of Khushnood, the injury which was fatal was found to be a bullet injury from SLR of Constable Ravinder and the three other injured persons named in the FIR i.e. Parvesh, Ahsaan, Ali Hassan were never medico legally Learned counsel further contended that the petitioner is in judicial custody since 13.12.2015 and challan has been presented on 20.08.2016 after a long time. The case before the trial Court is now stated to be fixed for 03.08.2017 for framing of charge and, thus, conclusion of the trial will take long time. On the other hand, learned State counsel, on instructions from SI Satpal Singh, has opposed the prayer for bail on the ground that the bail application of co-accused has already been dismissed and three accused are yet to be arrested. Heard. Without meaning to express any opinion on merits of the case, the petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate, Karnal.”

Learned counsel for the petitioner further submits that thereafter, co-accused Ravinder Kumar was also granted concession of regular bail, vide order dated 28.09.2017, passed by this Court in *CRM-M-30192-2017*.

It is further submitted that another co-accused Dheeraj Singh has also been granted concession of regular bail, vide order dated 21.11.2017, passed by this Court in *CRM-M-33292-2017*.

Learned counsel for the petitioner has relied

upon the statement of the prosecution witnesses to submit that none of them has supported the prosecution version and they were declared hostile by the public prosecutor. Learned State counsel, on instructions from ASI Shri Bhagwan and on the basis of the affidavit of the Superintendent of Police, Karnal, could not dispute the factual position.”

Without commenting on the merits of the case, considering the fact that the co-accused of the petitioner Pardeep Kumar, Ravinder and Dheeraj Singh have been granted the concession of regular bail and the petitioner is in judicial custody for the last 01 year, 04 months and 18 days and he is not involved in any other case, as per the custody certificate, filed by the learned State counsel, on instructions from ASI Gurbachan Singh, this petition is allowed and the petitioner is directed to be released on bail, subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

February 20, 2019
satish

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No