

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-10959-2019
Date of decision: 17.05.2019

Dharmender

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. D.S. Matya, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.598 dated 23.12.2016 under Sections 302, 328, 201, 120-B, 34 IPC, registered at Police Station Kherki Daula, Gurugram, District Gurugram.

Learned counsel for the petitioner relies upon the order dated 22.02.2019 passed in CRM-M-54567-2018, vide which co-accused Jabar Singh has been granted the concession of regular bail as well as the order dated 23.01.2018 passed in CRM-M-1917-2018, vide which another co-accused Kanhai Kumar Mishra was granted the concession of regular bail. The operative part of the order dated 22.02.2019 reads as under: -

“....Counsel for the petitioner has submitted that the petitioner is in custody since 24.12.2016 and the trial Court has framed the charge on 16.08.2017 and the primary charge against the

petitioner is under Section 201 read with Section 34 IPC for causing disappearance of the evidence by removing the dead body of deceased – Satpal from the place of occurrence along with the main accused – Dharmender.

Counsel for the petitioner has further argued that the petitioner was not named in the FIR and he was involved on the statement of the co-accused Dharmender that he has taken the help of the petitioner in disposing of the dead body. It is further submitted that the similar disclosure statement of the petitioner was recorded by the police.

The co-accused of the petitioner namely Kanhai Kumar Mishra has already been granted the concession of regular by this Court vide order 23.01.2018 passed in CRM-M No.1917 of 2018. The operative part of the order reads as under:-

“....Learned counsel for the petitioner submits that the petitioner was not named in the FIR and the prosecution case is based on circumstantial evidence. It is further submitted that the petitioner has been involved in the case under the aid of Section 120-B IPC after co-accused Dharmender made a disclosure statement that he has obtained some medicine from the petitioner and after mixing the same in a drink, he has given it to deceased.

Counsel for the petitioner further submitted that as per the medical evidence, which has come on record, the poison found in the body of the deceased is Aluminium

Phosphide which can be consumed in the form of tablet and because of its characteristic, it cannot be consumed by mixing it alcohol. Counsel for the petitioner has referred to the statement of PW-2-Dr. Deepak Mathur wherein he deposed that Cellphos tablet can never be given by deception due to its pungent smell. He also submitted that the petitioner was arrested on 26.12.2016 and out of six prosecution witnesses, none has deposed against the petitioner about any conspiracy between the petitioner and co-accused Dharmender.

Learned State counsel, on instructions from ASI Sajjan Singh, has not disputed the fact about the FSL report but has disputed the fact about the statement of the other prosecution witnesses with regard to the allegation of conspiracy between the petitioner and co-accused Dharamender. He further submits that 15 more prosecution witnesses are yet to be examined.

Without commenting on the merits of the case, considering the fact that the petitioner was not named in the FIR and was involved on the disclosure statement of the co-accused Dharamender; he is in judicial lock up since 26.12.2016 and 15 more prosecution witnesses are yet to be examined; the petitioner is ordered to be released on regular bail subject to his furnishing bail /surety bonds to the satisfaction of the trial Court.”

Counsel for the petitioner has also argued that while dismissing the application of regular bail of the petitioner, the Additional Sessions Judge in his order dated 17.10.2018 has noticed that it has come in the statement of PW13 i.e. the complainant – Jai Chand that he had seen the petitioner while dumping/carrying the dead body of the deceased and except that no other evidence has come on record.

Counsel for the State, on instructions from ASI Surinder Singh, assisted by counsel for the complainant has not disputed the factual position as well as the evidence, which as come on record against the petitioner.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody since 24.12.2016; he is facing the primary charge under Section 201/34 IPC; his co-accused i.e. Kanhai Kumar Mishra, has already been granted the concession of regular bail, 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.....”

Learned counsel for the petitioner further submits that the petitioner is in custody for the last 02 years, 04 months and 19 days and primary evidence against him is CCTV footage, which was supplied by a witness namely Vikram Singh, who has already been declared hostile by the Public Prosecutor, while deposing before the Court.

Learned State counsel, on instructions from ASI Karambir Singh,

submits that all the prosecution witnesses have been examined and the case is now fixed for defence evidence.

Without commenting anything further on merits of the case, considering the fact that all the prosecution witnesses have already been examined and there is no possibility of tampering with any prosecution evidence and also in view of the fact that the petitioner is in custody for the last 02 years, 04 months and 19 days and some of the prosecution witnesses have not supported the version, this petition is allowed and the petitioner is directed to be released on bail subject to furnishing his bail/surety bond to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

17.05.2019
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No