

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

CRM-M No. 30495 of 2018 (O&M)

Date of decision : 08.04.2019

Rakesh alias Kala

.....Petitioner

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Ms. Sharmila Sharma, Advocate for the petitioner.

Mr. Arun Beniwal, DAG, Haryana.

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DAYA CHAUDHARY, J. (Oral)

CRM No.10297 of 2019

This application is for placing on record Annexures P-8 to P-10.

Application is allowed and Annexures P-8 to P-10 annexed with the application are taken on record.

CRM-M No. 30495 of 2018

Petitioner Rakesh alias Kala has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to him in case FIR No.163 dated 13.05.2016 under Sections 302/120-B/212/216/34 of the Indian Penal Code, 1860 (for short - 'IPC') and Section 25/54/59 of the Arms Act, (*wrongly written as 24/54/59 in the head-note of the petition*) , registered at Police Station – Sadar Sonipat, Distt. Sonipat, during pendency of the trial.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas there is no evidence to connect

him with the alleged offence. No overt act has been attributed to him and he has been implicated in the cases with the aid of Section 120-B IPC. As per the allegations in the FIR, the petitioner conspired with the other assailants to commit murder of Jagbir and Anil, who were brother and nephew of the complainant. Learned counsel further submits that the incident had occurred due to political rivalry in the village and the petitioner does not belong to the village of the complainant and co-accused Kannu. Petitioner was apprehended in FIR No.72 dated 02.06.2016 under Sections 186, 332, 353, 307 IPC and 25 of Arms Act registered at Police Station Talwandi Sabo, Distt. Bathinda at the instance of Rahul Dev, HPS, DSP. As per version in the FIR, the mobile used by Ajay alias Kannu was kept on interceptor and as per location, various raiding parties were constituted. The Dera situated in village Jagga Ram Tirath was surrounded by the raiding party. Five boys namely Ajay alias Kannu, Rakesh alias Kala, Deepak alias Ford, Rohit alias Nittu and Bhola Singh were apprehended. Said FIR was registered with the allegations that the accused persons deterred the public servants from discharging their official duties. The petitioner was brought on production warrant in this case on 06.06.2016 and was produced before the Court at Sonipat. His disclosure statement was recorded while he was in police custody. Learned counsel also submits that nothing was recovered from the petitioner and the alleged recovery was planted. The investigation of the case has been completed and the challan has been presented before the Court. The star witnesses of the prosecution have already been examined. There is no possibility that the petitioner may influence the prosecution witnesses or tamper with the evidence. Co-accused of the petitioner namely Krishan Kumar and Raj Singh have been released on

regular bail vide orders dated 19.04.2017 and 26.02.2018 passed in CRM-M No.11932 of 2017 and CRM-M No.6695 of 2018, respectively. At the end, learned counsel for the petitioner submits that the petitioner is in custody since 06.06.2016 and have undergone custody of more than 2 years and 9 months. There are total 55 prosecution witnesses, out of which 36 witnesses have been examined and still the trial may take some time to conclude and no purpose would be served by keeping the petitioner in custody.

Learned State counsel has not disputed the custody period, stage of the trial and also release of two co-accused on regular bail. However, he has opposed the bail on the ground that it is a double murder case and the offence was committed by the accused persons in furtherance of their common intention. He further submits that the petitioner is the main accused and four more cases are against him, although he has been acquitted in one case. The eye witnesses of the case have supported the case of the prosecution. He also submits that the petitioner may abscond or threaten the material prosecution witnesses, who are still to be examined.

Heard arguments of learned counsel for the parties and have also perused the contents of the FIR and other documents on the file including the bail orders passed in case of two co-accused as well as statements of PW-2 Davender and PW-4 Ranbir, which have been placed on record in connected case bearing CRM-M No.33155 of 2018.

Admittedly, it is a case of double murder by the accused persons and allegations levelled are there of Section 120-B IPC. Petitioner cannot claim parity with two co-accused who have been released on regular bail. Conspiracy is a matter of evidence which will be tested by the trial Court after

appreciation of evidence as still some of the material prosecution witnesses are to be examined. For hatching conspiracy, it is not necessary to be present at the place of occurrence. Petitioner is also a habitual offender as he is involved in a number of cases like FIR No. 38 dated 24.05.2016 under Section 25 of Arms Act registered at Police Station Mohana, FIR No.154 dated 09.05.2016 under Section 25 of Arms Act and Sections 302, 307, 34 IPC registered at Police Station Sadar Sonipat, FIR No.321 dated 18.08.2012 under Section 25 of Arms Act registered at Police Station Ganaur and FIR No.72 dated 02.06.2016 under Section 186, 332, 353, 307 IPC and Arms Act registered at Police Station Talvandi, Bhatinda (Punjab). Out of these four cases, he has been acquitted in one case and convicted in two cases. On perusal of statements of PW-2 Davender and PW-4 Ranbir, it cannot be said that the petitioner was not present at the place of occurrence or was having no role. Simply it has been mentioned that the prosecution witnesses did not recognise the person who fired shot.

Accordingly, keeping in view the nature of the offence as well as allegations of Section 120-B IPC, the period of incarceration of the petitioner and his past conduct, no ground is made out to release the petitioner on regular bail and as such the present petition being devoid of any merit is hereby dismissed at this stage.

08.04.2019*sunil yadav***(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No