

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

CRM-M No.39092 of 2018

Date of Decision: 11.01.2019

Raj Kumar @ Raju

....Petitioner

Versus

State of Haryana

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Sanjay Vashisth, Advocate
for the petitioner.
Mr. Chetan Sharma, A.A.G., Haryana.

DAYA CHAUDHARY, J.

Petitioner-Raj Kumar @ Raju has filed the present petition under Section 439 Cr.P.C for grant of regular bail to him in case FIR No.26 dated 16.01.2018 registered under Sections 302 and 201 IPC at Police Station Sadar Ballabgarh, District Faridabad during pendency of the trial.

Learned counsel for the petitioner submits that as per allegations levelled in the FIR, there is no direct evidence available with the prosecution for involvement of the petitioner with the commission of offence. The, FIR, in question, was registered after an un-explained delay. The allegations are based on suspicion and assumption and accordingly the case is based upon hearsay evidence. Learned counsel also submits that it is an admitted case of the prosecution that deceased Rajbala went to take milk and she was stabbed in the broad day light at 10.30 a.m. In spite of busy place, there was no eye witness account of the incident. As per disclosure statement made by the petitioner, he threw knife on the spot which was lifted by the police in a broken condition from the place of occurrence.

Learned counsel also submits that till date, it has not been

enquired/investigated as to how the said knife has been linked with the commission of offence as neither there was any finger print nor blood matching. Learned counsel further submits that the alleged recovery of motorcycle or mobile phone cannot be linked to the petitioner. Statement of PW-1 Smt. Babita has been recorded, who has allegedly rushed to the spot on hearing cries of deceased Rajbala. As per statement of Smt. Babita (PW-1), she has not seen anybody causing injuries. She has further stated in her statement that police had reached on the spot at 11/11.30 a.m., whereas, the DDR was recorded at 16:08 hrs. Similarly, complainant Suresh (PW-2) appeared and as per his deposition, the complainant received a call from the petitioner at 7.30 p.m. on 12.01.2018 by giving a warning that he would fire shot upon his wife. Learned counsel also submits that had there been any such call, some complaint could have been moved but no such complaint was ever moved. Learned counsel also submits that all material witnesses have been examined but it has not come in the statement of none of those witnesses that the petitioner was involved in the commission of offence. In case of non-recording of statement of Nodal Officer, the petitioner is not to influence the witnesses or tamper with the evidence. Trial may still take some more time to conclude and no useful purpose would be served by keeping the petitioner behind bars. There are total 22 witnesses and all four material witnesses have been examined. The petitioner is in custody since 03.02.2018.

Learned State counsel has not disputed the custody period and recording of statement of four material witnesses. However, he has opposed the submissions made by learned counsel for the petitioner for grant of bail by considering the seriousness of offence. It has also not been disputed that

it is a case of no eye witness.

Heard the arguments of learned counsel for the parties and have also perused the contents of the FIR as well as other documents available on the file.

By considering the custody of the petitioner since 03.02.2018; it is not an eye witness account; Suresh (husband of the deceased-Rajbala) has already been examined; not only he but three more material witnesses have also been examined; the case is based upon hearsay evidence; the petitioner has been implicated on the basis of disclosure statement dated 03.02.2018, wherein, it has been stated that he had thrown knife on the spot and the police lifted one broken knife from the place of occurrence; neither any matching of blood group is there nor it has been investigated as to whether that knife was used in the commission of offence; the statements of PW-1 Babita and PW-2 Suresh (complainant), who is husband of the deceased have been recorded; nothing has come in the statement as to how the petitioner has been linked with the commission of offence and also the fact that there are total 22 witnesses and all material witnesses have been examined; the trial may take some time to conclude and no useful purpose would be served by keeping him behind bars, the present petition is allowed and petitioner, namely, Raj Kumar @ Raju is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court.

(DAYA CHAUDHARY)
JUDGE

11.01.2019
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No