

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

**CRM-M No.22587 of 2019
Decided on: 30.08.2019**

Rajpal

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Tajeshwar Singh Sullar, Advocate
for Mr. Paramjit Singh Sullar, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioners under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.640 dated 07.08.2017, for offence punishable under Sections 302/34 of the Indian Penal Code (in short 'IPC') and 25/27/54/59 of the Arms Act registered at Police Station City Sirsa, District Sirsa.

Counsel for the petitioner has relied upon the order dated 29.04.2019 passed by this Court in CRM-M No.15605 of 2018 granting bail to the co-accused Sanjay Kumar. The operative part of the order dated 29.04.2019, reads as under:-

*“....Learned counsel for the petitioner submits that
as per the FIR, got registered by complainant Sharwan, it*

is stated that they are two brothers and two sisters. His younger brother Sandeep, who is aged about 27 years, is running an institute in the name of Sirsa Education. On 07.08.2017, he along with his maternal uncle Banwari Lal and brother Sandeep came to his office at 10.30 a.m. After some time, friend of Sandeep namely Dharmender also reached there and at 12.00 noon, Subhash (who is in Haryana Police and his wife Meena Kumari is also a Constable in Haryana Police) also came there along with two other boys. Subhash told Sandeep that you are friend of his wife and had spoiled his home and started abusing. When the complainant tried to understand him, Subhash took out a pistol and started abusing that he will finish him and fired three shots at Sandeep. One fire missed, second hit him on his forehead on right side and third shot hit on his chest. Thereafter, two other boys incited Subhash to fire upon and in the meantime, they ran away. Deceased Sandeep was taken to the hospital, where he was declared dead.

Learned counsel for the petitioner has argued that the petitioner is one of the two persons, who have been referred to as two boys in the FIR. This shows that none of the three persons i.e. complainant Sharwan, Banwari Lal and Dharmender knew them by name and there is no allegation in the FIR or in the statement recorded under Section 161 Cr.P.C. as well as in the statement made before the Court, where all the persons have already appeared as PW7 Sharwan, PW14 Banwari Lal and PW15 Dharminder that the petitioner, on arriving in the office of deceased Sandeep, has incited co-accused Subhash to commit the offence. It is further submitted that there is no motive for the petitioner to commit any offence and as per version of the complainant, Subhash has committed the offence on account of the suspicion that his wife was having illicit relations with deceased Sandeep. It is also

argued that nothing is stated that petitioner, on any previous occasion, had extended any threat to deceased Sandeep to show meeting of mind with main accused Subhash regarding conspiracy.

Learned counsel for the petitioner has submitted that the petitioner is in judicial custody for the last more than 01 year and 06 months; the case is still at the stage of recording the prosecution evidence; all the material witnesses have been examined and there is no possibility that the petitioner will influence any private witness.

*Learned State counsel, on instructions from ASI Atma Ram and assisted by learned counsel for the complainant, has not disputed the factual position, however, opposed the prayer for bail and cites a judgment in **Gobarbhai Naranbhai Singala Vs. State of Gujarat and others, 2008 (1) RCR (Crl.) 903**, wherein the Hon'ble Supreme Court has held that mere fact that an accused is in long custody of two years, is not a good ground to grant bail, as the trial is not progressing.*

*However, a perusal of the aforesaid judgment shows that in its para No.25, the Hon'ble Supreme Court, while relying upon an earlier judgment in **State of U.P. Vs. Amarmani Tripathi, 2005 (4) RCR (Crl.) 280**, has held that while considering an application for bail, what is required to be looked is (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail.*

After hearing learned counsel for the parties, I find

that primarily, from the statement of prosecution witnesses and contents of the FIR, no specific motive is attributed to the petitioner and considering the fact that all the material witnesses have been examined and the petitioner is in custody for the last more than 01 year and 06 months, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bond to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.”

Counsel for the petitioner has submitted that two boys referred to in the FIR are co-accused Sanjay Kumar, who has already been granted the concession of regular bail by this Court vide order dated 29.04.2019 and the other is the present petitioner – Rajpal and no overt act is attributed to them except that after the co-accused Subhash has committed the offence, they raised a *lalkara*.

Counsel for the State, on instructions from ASI Gurmeet Singh, submits that out of 28 prosecution witnesses, 14 PWs have already been examined and 02 PWs have been given up and opposed the prayer for bail.

Without commenting anything on merits of the case, considering the fact the co-accused of the petitioner has already been granted the concession of bail; out of 28 prosecution witnesses, 14 PWs have already been examined and 02 PWs have been given up and the conclusion of the trial is likely to take some time, this petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaq Magistrate.

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.

(ARVIND SINGH SANGWAN)
JUDGE

30.08.2019
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No