

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-50708-2018

Date of decision: 29.04.2019

Rohit Mandhok

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Nandan Jindal, Advocate
for the petitioner.

Mr. Sidakmeet Sandhu, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.158 dated 28.04.2017 under Sections 302/34 IPC and Sections 25/27 of Arms Act, registered at Police Station Zirakpur, District SAS Nagar (Mohali).

Learned senior counsel for the petitioner relies upon the order dated 01.08.2018 passed in CRM-M-42041-2017, granting regular bail to co-accused Sushil Malik and the same reads as under: -

“Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.158 dated 28.04.2017, for offence punishable under Sections 302/34/120-B of the Indian Penal Code (in short 'IPC') and 25/27/54/59 of the Arms Act, registered at Police Station Zirakpur, District S.A.S. Nagar Mohali.

Learned Senior Counsel for the petitioner has submitted that

as per the allegation in the FIR, which was got registered by one Mahavir Parsad Jain, father of deceased – Ajay Jain, it is stated that on 27.04.2017, he received a phone call from his younger son that 03 unknown persons riding on a motorcycle have fired a bullet shot on his son – Ajay Jain and he has taken him to Civil Hospital, Sector 6, Panchkula and on reaching there, he found that his son – Ajay Jain has died. Later on, the police recorded the statement of Ashish Jain as well as a supplementary statement of the complainant – Mahavir Parsad Jain. In the supplementary statement, it was stated by Mahavir Parsad Jain that his son – Ajay Jain was having a shop in Baltana and one Rohit Mandhok was also having a mobile shop in the same vicinity and there was a business rivalry between the deceased son of the complainant – Ajay Jain with Rohit Mandhok and he, in conspiracy with one Amit Bhura, who is lodged in Patiala Jail, would have killed his son – Ajay Jain. Thereafter, the police arrested the aforesaid Amit Bhura on 26.07.2017 and during his interrogation, he made a disclosure statement that the petitioner – Sushil Malik has helped him in committing the said offence and the petitioner was also nominated as an accused in the present FIR.

Learned Senior Counsel for the petitioner has further argued that the petitioner is in judicial lock up since 06.08.2017 and the statement of the complainant – Mahavir Parsad Jain, has been recorded in the Court and this witness, while appearing as PW1, has stated that he do not know who committed the murder of his son and he had no enmity with the accused person present in the Court and he even do not have any dispute with Rohit Mandhok and his father Narinder Mandhok, who are his neighbour. This witness has failed to identify the petitioner in the Court along with the other co-accused and stated that he had seen them for the first time in the Court. This witness was later on, declared hostile by the Public Prosecutor and in cross-examination, he has even denied giving his supplementary

statement dated 23.07.2017 as noticed above and further stated that he has not made any such statement despite being confronted with the said statement.

In further cross-examination by the Public Prosecutor for identifying the petitioner by name, he has refused to identify him and has denied the suggestion that he is intentionally not identifying the petitioner.

Learned Senior Counsel for the petitioner has further submitted that the eye-witness i.e. brother of the deceased PW2 – Adish Jain, while deposing on oath before the Court, has also refused to identify the petitioner, though, he has stated that he could identify the assailant, who fired shot on his brother but stated that the accused present in the Court are not the said persons/assailants. Thereafter, this witness was also declared hostile.

Learned Senior Counsel for the petitioner has also argued that the petitioner is a Constable serving in Indian Army and he has set up a defence that as per the certificate issued by the Commanding Officer, where he is serving, he was on duty on 27.04.2017 when the incident has taken place. It is further submitted that the only evidence against the petitioner is the disclosure statement of Amit Bhura and it will be seen during the course of trial whether the same is admissible against the petitioner or not as the same is not even made part of the report under Section 173 Cr.P.C.

Counsel for the State, on instructions from HC Chamkaur Singh, has not disputed the fact that the disclosure statement of Amit Bhura is not part of the report under Section 173 Cr.P.C. and has also not disputed the fact that both PW1 and PW2 have not supported the prosecution version and have not identified the petitioner. It is further submitted that out of 38 prosecution witnesses, only 03 PWs have been examined so far.

Without commenting anything on merits of the case and

considering the fact that the petitioner is in judicial lock up for a period of about 01 year; the eye-witness has failed to identify the petitioner and also considering the fact that the disclosure statement of the co-accused – Amit Bhura on the basis of which the petitioner was nominated in the present FIR, is not part of the report under Section 173 Cr.P.C. and also considering the fact that conclusion of the trial will take some, this petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds and 02 sureties to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.”

Learned senior counsel for the petitioner submits that even subsequently, on 10.08.2018, another witness PW4 was examined, who had also failed to narrate anything about the incident and stated that his statement was not recorded by the police. This witness also failed to identify the accused persons in the Court and he was declared hostile and during his cross-examination by the Public Prosecutor, he even denied the statement, which was made by him before the police on 11.08.2017, wherein it was stated by him that co-accused Narinder Mandhok had come to him and made a disclosure that deceased Ajay Jain was shot dead by three persons on 27.04.2017.

Learned senior counsel for the petitioner has submitted that the petitioner is in custody since 01.08.2017; all the material witnesses have been examined and only the official witnesses remain to be examined. It is further submitted that it will take some time in conclusion of the trial and considering the fact that concession of regular bail has already been granted to co-accused, petitioner may also be released on regular bail.

Learned State counsel, on instructions from HC Dharam Singh, has not disputed the fact that all the material witnesses have been examined and

they have failed to support the prosecution version and were declared hostile.

Without commenting anything further on merits of the case, considering the fact that the petitioner is in custody since 01.08.2017; the case is still at the stage of recording the prosecution evidence and co-accused of the petitioner namely Narinder Mandhok and Sushil Malik have already been granted the concession of regular bail, 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/Illaqa Magistrate/Duty Magistrate.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

29.04.2019

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No