

229 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-43966-2019

Date of Decision : October 23, 2019

Yashbir @ Foji

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Amarjit Singh Virk, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

This is the first petition filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.104 dated 11.3.2016 under Sections 148/302/307/333/353/186/120-B/ 212/149 IPC and Section 25 of the Arms Act, registered at Police Station Ganaur, District Sonapat.

Counsel for the petitioner relies upon the order dated 18.9.2019 passed in CRM-M-38690-2019, which reads as under :-

“Learned counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of one Ved Pal, it is stated that Vikas @ Dudiya was his cousin brother and at about 4:00 PM, he received information that Vikas @ Dudiya has been shot in the premises of Ganaur Court. On receiving such information, he reached the Civil Hospital, Ganaur and found that his cousin brother Vikas

@ Dudiya has died in the hospital. Thereafter, Ajay s/o Sultan informed him that his cousin brother has been killed by Gaurav @ Meeta and Rupender @ Nanha (petitioner herein) and they have been apprehended by the police at the spot and it further came to his notice that Ravi, Ajay, Yashvir and Rahul @ Jahji were also involved in the conspiracy of murder of aforesaid Vikas @ Dudiya on the asking of one Sandeep Badwasni.

It is further stated in the FIR that while in police custody, deceased Vikas @ Dudiya had informed the complainant that some unknown persons in a Fortuner car bearing registration No. HR-10-X-4444 were doing surveillance for the past two days and on 09.03.2016, Vikas @ Dudiya informed complainant that Sandeep Badwasni and his brother, in conspiracy with police officials, will commit his murder in Sonapat Court.

Learned counsel for the petitioner has argued that it has come in the statement of PW13 ASI Ajmer that on 11.03.2016, he along with ASI Ravinder, had produced Vikas @ Dudiya in the Court in FIR No. 462 dated 20.11.2014, under Sections 392, 397, 420, 465 of the IPC and ASI Dayanand obtained police remand of Vikas @ Dudiya. Thereafter, Vikas @ Dudiya was again produced before Illaqua Magistrate in the presence of PW13 at about 11.30 AM and when they were coming out of the Court, one boy, wearing blue coloured pant

and shirt, fired a shot upon Vikas @ Dudiya and ran away. PW13 ASI Ajmer, with the help of other police officials, apprehended a boy with a country made pistol of .315 bore, who told his name as Rupender @ Nanha.

Learned counsel for the petitioner has further referred to cross-examination of PW13 ASI Ajmer, wherein he has stated that he had seen the boy who had fired a shot upon Vikas @ Dudiya and he can identify the boy. This witness further stated that none of the two accused persons, namely Rupender and Gaurav, was apprehended by the police on that day from the Court complex and they are not the boys who murdered Vikas @ Dudiya on that day.

Learned counsel for the petitioner has further argued that though the incident took place at about 11.30 AM, however, the statement of complainant Ved Pal was recorded around 8.00 PM and no FIR was registered by the police in the intervening period despite the fact that three police officials were present when the incident occurred.

Learned counsel for the petitioner has further argued that in the statement of PW7 Satender, the petitioner is not named and this witness has stated that on 10.03.2016, when he reached at the house of one Vijay, from whom he had purchased LED several times, he found that Sandeep, Ravinder, Kanwal Singh and

Bhagat Singh, who were previously known to him, along with some other unknown persons, were conversing with each other that they will commit the murder of Vikas @ Dudiya in the police custody.

Learned counsel for the petitioner has further relied upon the report of FSL to argue that as per the description of articles sent to FSL, at Sr. No. (iii), a parcel containing Pellet and Wad, recovered from the body of deceased Vikas @ Dudiya and at Sr. No. (vi), one parcel containing one country made pistol of 0315 bore with one 0315 bore live cartridge, recovered from the petitioner are mentioned. Further, at Sr. No. (vii), one parcel containing one country made pistol along with two 9 mm live cartridges, recovered from co-accused Gaurav @ Meeta, is mentioned.

Learned counsel submitted that at Sr. No. 6 of the FSL report, it is opined that "Lead pellets contained in parcel No. (iii) were found to be fired lead pellets of size (I). Such type of pellets are usually loaded in shotgun cartridges including 12 bore cartridges" and at Sr. No. 7, it is opined that "Wad contained in parcel No. (iii) was found to be a fired air cushion Wad of a 12 bore cartridge".

Learned counsel for the petitioner has, thus, argued that even as per the police version, the recovery of the weapon from the petitioner was of a .315 bore country made

pistol, which does not tally with the pellet and wad recovered from the body of the deceased as per FSL report.

Learned counsel for the petitioner has further argued that during trial, on an application moved by the accused persons for preserving the call details of Ram Karan, Joginder and Naresh, in order to find out any conspiracy between them, the trial Court, vide order dated 04.11.2016, directed to preserve the said call details, which the petitioner is to prove during his defence.

Learned counsel for the petitioner has referred to another order dated 29.11.2016, passed by the trial Court, in which one of the co-accused, namely Sumit, has prayed for preserving a CD containing the CCTV footage and phone call details of Ram Karan with his brother Naresh as well as Joginder and the said application was also allowed by the trial Court.

Learned counsel for the petitioner has further argued that one of the co-accused Sumit has already been granted concession of regular bail by this Court, vide order dated 19.07.2018 passed in CRM-M-14000-2018 by making the following observations:

“Counsel for the petitioner has submitted that as per the allegation in the FIR, 11 persons were named for the murder of Vikas @ Dudhiya. It is further submitted that it has come in the FIR that some

unidentified persons have done recci in a Fortuner car bearing registration No.HR-10X-4444, for the last 02 days preceding the date of incident. It is also submitted that in the FIR, the complainant – Ved Pal has also stated that on 09.03.2016, he had met his deceased brother namely Vikas Dudhiya, who has told him that Sandeep Barwasni along with certain other persons are conspiring to kill him and even at that stage, the name of the petitioner did not surface.

Counsel for the petitioner has further submitted that after 05 months, a statement under Section 161 Cr.P.C. was recorded, in which one Satender, cousin of deceased – Vikas @ Dudhiya has stated that the petitioner was also involved in the conspiracy and thereafter, the petitioner was arrested. It is also submitted that in the statement of the complainant – Ved Pal, who appeared as PW2 and in the statement of Ram Pal and another cousin of the deceased, who appeared as PW1, they have deposed on the line of the version given in the FIR and have not named the petitioner.

Counsel for the petitioner has further argued that the aforesaid Satender, who had named the petitioner in his statement, recorded under Section 161 Cr.P.C., was examined as PW7 and has stated that the petitioner was not present there and he has

not even named him in the statement made before the police.

Counsel for the petitioner has referred to the statement of this witness where the Public Prosecutor made a request to declare this witness as hostile with regard to the allegation against the petitioner and in the cross-examination conducted by the Public Prosecutor, this witness has stated that he do not know the petitioner personally and has not named him before the police, in his statement. When confronted with the statement Ex.PW7/A, he has stated that he has never made such statement before the police that on 11.09.2016, the petitioner – Sumit along with other persons, mentioned in his statement, hatched a conspiracy and arranged the murder of Vikas @ Dudhiya. Counsel for the petitioner has further argued that the widow of deceased – Vikas @ Dudhiya, appeared as PW8 and has only stated that she has seen a Fortuner car bearing registration No.HR-10X4444, roaming in the area of Court Complex, in which some persons were sitting and she had identified only one accused i.e. Sandeep Barwasni and further stated that this fact was narrated to her by the complainant – Ved Pal.

Counsel for the petitioner has further submitted that the petitioner is in judicial

custody since 08.07.2016 and he is being tried in the aid of Section 120-B IPC, qua which the prosecution has led the entire evidence, as noticed above.

Counsel for the State, on instructions from ASI Sanjay Kumar, assisted with counsel for the complainant, has stated that the petitioner is the registered owner of the vehicle bearing registration No.HR-10X-4444, which was found involved for the purpose of conducting the recci.

In reply, counsel for the petitioner has submitted that it has come in the disclosure statement of the petitioner itself that the co-accused Ravi had borrowed the vehicle from the petitioner on 04.03.2016 for going to Haridwar with his friend and the vehicle was returned on 12.03.2016 and at that time, the said co-accused – Ravi has informed the petitioner that he has even used the vehicle for conducting a recci and then they had gone to Haridwar.

Counsel for the petitioner has also submitted that except in the aforesaid evidence, there is no other evidence, which has come on record and it will be a debatable issue whether the petitioner has participated actively in the conspiracy or not.

Without commenting anything on merits of the case and considering the fact that the

petitioner is in judicial custody since 09.07.2016 as per the Custody Certificate, filed in the Court today; he is not found involved in any other case and also in view of the fact that PW7 – Satender has been declared as hostile with regard to the allegation levelled against the petitioner, 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/Illaqha Magistrate/Duty Magistrate.”

Learned counsel for the petitioner has, thus, argued that the identity of the petitioner is not proved from the statement of any of the prosecution witnesses and even the weapon, allegedly recovered from the petitioner, does not tally with the pellets and was recovered from the body of deceased Vikas @ Dudiya, as per FSL report.

Learned counsel for the petitioner has further argued that the petitioner is in judicial custody for the last more than 03 years and 05 months and out of total 43 prosecution witnesses, only 13 witnesses have been examined so far, therefore, conclusion of the trial is likely to take a long time.

In reply, learned State counsel, on instructions from SI Om Parkash, has, however, opposed the prayer of the petitioner for grant of regular bail on the ground that he was

arrested at the spot with a country made pistol and later on, when another co-accused was arrested, a supplementary challan was presented and on that account, the delay has occurred in conclusion of the trial.”

The counsel for the petitioner submits that Rupinder @ Nanha was arrested at the spot whereas, the petitioner was nominated later on.

Learned State counsel, on instructions from the ASI Ashok Kumar Singh has not disputed the factual position.

Without commenting anything on the merits of the case; considering the aforementioned submissions made by the counsel for the petitioner and that the petitioner is in custody for the last more than 2½ years and also noticing the circumstances upon which the co-accused Rupender @ Nanha was granted the concession of regular bail, this petition is allowed and the petitioner is directed to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/ Illaqa Magistrate, concerned.

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

October 23, 2019
satish

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO