

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Misc. No. M- 5973 of 2020 (O&M)

Date of Decision: 23.09. 2020

Nitin alias Happy

... Petitioner(s)

Versus

State of Haryana

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sarfraj Hussain, Advocate
for the petitioner(s).

Mr. Chetan Sharma, Assistant Advocate
General, Haryana for the respondent.

Mr. Deepender Singh, Advocate
for the complainant.

Anil Kshetarpal, J.

CRM-23860-2020

Application is allowed as prayed for. The statement of Suresh Yadav is taken on record.

CRM-M-5973-2020

The petitioner prays for grant of regular bail pending trial in a criminal case arising from FIR No. 62 dated 18.07.2018, registered under Section 302, 506, 34 & 120-B IPC and Section 25 of the Arms Act, 1959, at Police Station GRP Gurugram, District Gurugram.

The case of the prosecution has been noticed by the learned

Additional Sessions Judge, Gurugram in para 1 of its order dated 24.01.2020, which is extracted as under:

“Shorn of unnecessary details, the facts of the case of the prosecution are that dated on dated 18.07.2018, the complainant Suresh Yadav moved an application before the concerned police to the effect that on that day, at about 6.40 P.M., when he alongwith his younger brother Mahesh Yadav after crossing railway line reached towards Palam Vihar, Gurugram, for the purpose of boarding their children in a school bus and were thus waiting in that regard, then one white coloured Scorpio car being occupied by the applicant-accused alongwith the other co-accused persons wielding different type of weapons reached there and raised a lalkara for killing the complainant and his family members and immediately thereafter they fired several gun shots upon the abovesaid Mahesh Yadav, due to which, the said Mahesh Yadav fell down on the ground and while reiterating the assailants also threatened for killing the other family members of the complainant and thereafter all the accused persons after sitting in their said vehicle went way from the spot and then the complainant took his brother to the hospital, where he was declared dead”.

Learned counsel for the petitioner contends that the petitioner is in detention since 12.08.2018. He further contends that the petitioner is neither specifically named in the FIR and nor any firearm has been

recovered from him. He further submits that the statement of the first informant has been recorded, however, the prosecution filed an application under Section 319 Cr.P.C. for summoning the additional accused which has been allowed. He, hence, prays that the petitioner be granted the concession of regular bail.

On the other hand, Mr. Chetan Sharma, Assistant Advocate General, Haryana, assisted by Mr. Deepender Singh, Advocate, has contended that as per the case of the prosecution, three persons came out of the vehicle and pumped seven bullets on the deceased, namely Mahesh Yadav. He further submits that there was a dispute between the family members of Mahesh Yadav and Roshni.

Learned counsel for the petitioner submits that the petitioner is not related to the family of Roshni.

This Court has considered the submissions of learned counsel for the parties.

As per the information supplied by Mr. Chetan Sharma, on the instructions of Sub Inspector Parmanand, the petitioner does not have criminal antecedents. The petitioner is in detention for more than two years. It is undisputed that the prosecution has not recovered any firearm on disclosure of the petitioner. There is also no dispute that the prosecution did move an application under Section 319 Cr.P.C. which has been allowed.

Keeping in view the aforesaid facts, the trial would have to commence *de novo*. Without commenting on the merits of the case and keeping in view the period of detention of the petitioner, this Court is of the considered view that further incarceration of the petitioner, at this stage,

cannot be justified. Hence, the present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing of bail/surety bonds to the satisfaction of the learned Area Judicial Magistrate/Chief Judicial Magistrate/Duty Magistrate.

(Anil Kshetarpal)
Judge

September 23, 2020
“DK”

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