

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
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CRM-M-8827-2020

Date of decision: 02.06.2020

PAWAN BANSAL

...PETITIONER

V/S

STATE OF HARYANA

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vinod Ghai, Sr. Advocate,
with Mr. Deepender Singh, Advocate,
for the petitioner.

Mr. Apoorv Garg, Deputy Advocate General, Haryana,
for the State.

Mr. Akshay Bhan, Sr. Advocate,
with Mr. Rose Gupta, Advocate,
for the complainant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court praying for grant of regular bail in FIR No. 29 dated 11.01.2017 under Sections 279, 336, 427 IPC (Later Sections 307, 120-B, 34, 202 IPC also added), P.S. Civil Lines, Hisar, District Hisar, Haryana.

It is the contention of the Mr. Vinod Ghai, learned senior counsel for the petitioner that the petitioner has not been named in the FIR. He contends that as per the FIR, the complainant Mr. Kamal Gupta on 11.01.2017 was going to the Court from his house while driving Innova

Toyota Crysta HR-20AG-8659. One jeep, which was driven by a young boy of about 25-26 years, came at a very high speed from Dabara Chowk, Hisar and hit his car from front on the wrong side, because of which, the front portion of the car was damaged. The driver of the jeep started running away after leaving the jeep. At some distance, one scooty was parked and the jeep driver ran away by sitting on the scooty. It is stated that the driver of the jeep had intentionally hit the car. He contends that as per the said FIR, the same was against an unknown person. FIR was initially registered under Sections 279, 336, 427 IPC. Unfortunately, the father of the complainant Mr. Subhash Gupta was murdered on 24.01.2017. In the said FIR, which has been registered against the petitioner who happened to be father-in-law of one of the sons of the deceased, was also involved in the case and stands convicted. He contends that on 27.04.2017, Mr. Sanjeev Kumar Gupta, *chacha* of the complainant, got recorded a statement that the scooty belongs to the company which was owned by Pawan Bansal, the petitioner, and was being driven by one Sumer who is the employee of Mr. Pawan Bansal-petitioner. Allegations were made that the accident had taken place because of the marriage having gone sour of the brother of the complainant. It is with an intention to harm the family of the complainant that such an accident has been planned by the petitioner. On this basis, the involvement of the petitioner was sought to be meted out leading to the addition of Section 307 IPC. Petitioner was arrested on 09.05.2017 and is in custody since then. He asserts that till date, the trial has not concluded and now because of the non-appearance of Sanjeev Kumar Gupta, *chacha* of the complainant, the prosecution witness, the hearing of the case is being adjourned. He points out that on 14.11.2019, no prosecution witness was

present leading to the adjournment of the case. On 16.12.2019, again Sanjeev Kumar Gupta and the Investigating Officer were not present, because of which, bailable warrants were issued for 06.01.2020 which date being declared the Court holiday, the case was adjourned. Thereafter, on 19.03.2020, Sanjeev Kumar as well as the Investigating Officer did not come present despite the service of the warrants and fresh bailable warrants have been issued. Subsequently, because of the pandemic, no further hearing as such has been taken in the present case except for formal adjournment in the matter. He, on this basis, contends that more than three years have passed since the petitioner is in custody and the trial having not been concluded which still is not likely to be concluded in the light of the ensuing pandemic, the petitioner be granted concession of bail especially in the light of the allegations against him and the way he has been involved in the case. Reference has also been made to the order dated 09.08.2017 (Annexure P-7) passed by a Co-ordinate Bench in CRM-M-28279 of 2017 wherein a similarly placed co-accused of the petitioner, namely, Sumer has been granted the benefit of regular bail by this Court. He, therefore, prays that the petitioner be released on bail.

Counsel for the complainant, on the other hand, contends that hand of the petitioner is bit large in the commission of offence. Not only Sumer, who was the employee in the company of the petitioner, but the scooty, which was being used by the jeep driver for escaping, belong to the petitioner. That apart, he is the main conspirator and the reason for all this is apparent because of the sour relationship between the petitioner and the family of the complainant because of the matrimonial matter of the brother of the complainant. This is further fortified from the fact that Mr. Subhash

Gupta, father of the complainant, was brutally killed on 24.01.2017 where the involvement of the petitioner stands established on his conviction in the said case. As regards the delay in the trial proceedings, he asserts that the same is attributable to the petitioner as initially, he had moved an application for transfer of the case from Hisar followed by a revision petition in this Court after the rejection of the said prayer by the District Judge. That apart, he asserts that only one witness i.e. Mr. Sanjeev Kumar Gupta is left out apart from the Investigating Officer and, therefore, the trial is on the verge of the conclusion. Petitioner is influential person and is likely to influence the trial in case he is granted the concession of bail. There can be further ill feeling between the parties which would lead to loss a limb to the family of the complainant.

Reference has also been made by the learned senior counsel for the complainant to a bail application which was preferred by the petitioner during the pendency of this case which was the third bail application which was filed in the trial Court but the same has been dismissed on 01.04.2020. In this regard, the order, which has been shown, indicates that the application has been moved on the basis of medical grounds for grant of regular bail. He, therefore, contends that the petitioner, at this stage of the trial, be not granted the benefit of bail.

Counsel for the State has pointed out that the petitioner is also involved in the other cases, to which the senior counsel for the petitioner has pointed out that in seven of the cases, petitioner stands already acquitted. In one of the cases, he has been convicted and the remaining case is the one which is pending trial before the trial Court which is the present one. Counsel for the State has further pointed out that there has

been mobile communication between the petitioner, one Sumer and Naresh who is also an employee of the petitioner. Assertion has also been made that Naresh was driving the jeep and was also an employee of the petitioner-Company. He, therefore, contends that the petitioner be not granted the concession of bail.

I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the records of the case.

The details of the FIR would show that the name of the petitioner does not figure in the FIR. During the investigation also, nothing has come out as far as the involvement of the petitioner is concerned except for on 22.04.2017 when statement of Mr. Sanjeev Kumar Gupta, *chacha* of the complainant, was recorded wherein the involvement of the petitioner has been indicated by stating that the scooty was owned by the company of the petitioner and was driven by Sumer. It is from there onwards, the involvement of the petitioner is projected. It is not in dispute that Mr. Sanjeev Kumar Gupta, *chacha* of the complainant, was not present at the spot when the incident had taken place. He being not an eye witness, therefore, the details with regard to the aspect of the scooty having been driven by Sumer is not acceptable as of now.

As far as the matter is concerned with regard to the other cases against the petitioner, out of nine cases registered against the petitioner, in seven of the cases, he has been acquitted although the learned senior counsel for the complainant has pointed out that this has happened because of the compromise which has been entered into by the petitioner with the complainant or the witnesses not supporting the case of the prosecution.

The fact remains that the petitioner, as of now, stands acquitted in these

matters. In one of the cases, admittedly, the petitioner has been convicted in an offence under Section 302 IPC where the murder of Subhash Gupta, father of the complainant, is involved. The last case is the present one where the petitioner is facing trial.

It may be added here that although direct involvement of the petitioner in the case of murder may not be relevant for the present case as it is based upon a different set of facts, however, the fact remains in the present case on the basis of the proceedings before the trial Court especially as recorded on 14.11.2019, 16.12.2019 and 19.03.2020 that the prosecution witnesses have not been appearing in Court despite efforts being made by the trial Court, the matter/trial is being delayed. Unfortunately, because of the pandemic, the proceedings before the trial Court are being adjourned. The trial, therefore, is uncertain with regard to its conclusion as of now. The co-accused of the petitioner, namely, Sumer, who is said to be an active person involved in the commission of offence as he had driven the scooty on which Naresh ran away although the said aspect also stands disputed by the learned senior counsel for the petitioner on the basis of the FIR where it is not so mentioned, has been granted the concession of bail by this Court on 09.08.2017 (Annexure P-7). In the facts and circumstances of the present case, as it exists today, further continuation of the petitioner in jail would not serve any purpose as there is uncertainty with regard to the conclusion of the trial.

In view of the above, the present application is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, Hisar in this case.

A direction is issued to the trial Court to make an endeavour to conclude the trial at the earliest as the same is pending since the year 2017.

Any observation made herein above shall have no bearing on the merits of the case during trial in any manner.

June 02, 2020

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No