

In virtual Court

CRM-M-15765-2020

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-15765-2020 (O&M)
Date of decision: 10.08.2020

Hari Pal Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. J.S. Thakur, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

This is 4th petition for grant of regular bail in FIR No.106 dated 15.07.2017 under Sections 302, 148, 149 IPC (Charge framed under Sections 302, 120-B IPC) and Section 25 of Arms Act, registered at Police Station City Kotkapura, District Faridkot; earlier two were dismissed as withdrawn and 3rd petition was disposed of with a direction to the trial Court to conclude the trial expeditiously within a period of six months vide order dated 25.11.2019.

Learned counsel for the petitioner submits that now the trial is standstill and out of total 23 prosecution witnesses, only 10 PWs have been examined so far, due to COVID-19 situation in the country. It is further submitted that after 3rd petition praying for regular bail was decided, an application was moved under Section 319 Cr.P.C. for summoning the additional

accused, which was allowed and fresh charges were framed and the trial has re-started. It is also submitted that the petitioner is now in custody for the last 03 years and 02 days.

On merits, learned counsel for the petitioner has argued that as per allegations in the FIR, the police received information regarding death of Lavi Deora at Civil Hospital, Kotkapura and recorded statement of Bunty Deora, wherein he stated that he has two sons namely Lavi Deora and Viney Deora and they are facing number of criminal cases. Viney Deora is lodged in Bathinda jail, whereas Lavi Deora has been released on bail on 19.01.2017. It is further stated that on the date of occurrence, his son accompanied by Kala and Gora and he was present at the truck union, when he received information that somebody had fired upon Lavi Deora in a circus show. On receiving the information, he reached at the spot and was informed that Bharat Bhushan and Loveraj Singh along with three unidentified persons fired shot on his son, which resulted into his death. It is further argued that the petitioner has been falsely implicated in this case, on the basis of disclosure statement of one co-accused Ankush and extra-judicial confession made before one witness Jarnail Singh.

Learned counsel for the petitioner has referred to the statement of Jarnail Singh, who appeared before the trial Court as PW2 and he has not supported the prosecution version. It is further submitted that only evidence against the petitioner is extra-judicial confession, which is not proved from the statement of Jarnail Singh, before whom it was allegedly made and this witness was declared hostile. In cross-examination, this witness has even denied having made any such statement to the police. It is also submitted that disclosure

statement made by co-accused is not admissible in evidence and whether the same was followed by any recovery, is to be seen during the trial, as it is re-started after summoning of additional accused.

Learned State counsel has filed the affidavit of Senior Superintendent of Police, Faridkot along with the custody certificate dated 08.08.2020 in the Court today.

A perusal of the custody certificate shows that the petitioner is not involved in any other case and he is in custody for the last more than 03 years.

A perusal of the affidavit of SSP, Faridkot shows that challan against the petitioner was presented on 24.10.2017 and further investigation was carried out. It is further stated in this affidavit that out of total 23 prosecution witnesses, 10 PWs have been examined and then an application under Section 319 Cr.P.C. was moved on 26.09.2018 to summon the additional accused namely Deepak Kumar @ Teenu, Sampat Nehra and Lovraj Singh @Luvi and they were summoned and fresh charges were framed against them. It is also stated that after March, 2020, prosecution evidence could not be recorded due to COVID-19 situation.

The affidavit is silent about role of the petitioner, however, learned State counsel could not dispute that primary evidence against the petitioner was a disclosure statement of co-accused Ankush and extra-judicial confession made by the petitioner before one Jarnail Singh, who has not supported the prosecution version, while appearing as PW2.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering the fact that the petitioner is not

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involved in any other case; he is in custody for the last more than 03 years and the trial is still at the stage of recording the prosecution evidence, as de-novo trial was started after summoning the additional accused under Section 319 Cr.P.C. and also in view of the fact that primary legal evidence against the petitioner is extra-judicial confession made before a witness, who has not supported the prosecution version, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate, concerned.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

10.08.2020
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No