

221 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M 16196-2020

Date of Decision : July 08, 2020

Mukesh alias Munna

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. R.S. Rai, Senior Advocate with
 Mr. Manish Soni, Advocate
 for the petitioner.

 Mr. Sukhdeep Parmar, DAG, Haryana.
 (through video conferencing).

ARVIND SINGH SANGWAN, J. (Oral)

 This is the second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR 255 dated 9.6.2017 under Sections 302/506/34 IPC and Section 25 of the Arms Act, registered at Police Station Pataudi, District Gurugram, the earlier one was dismissed as withdrawn on 15.1.2020.

 Learned Senior counsel for the petitioner submits that new ground for grant of bail is that the petitioner has already undergone more than three years of judicial custody and the trial is still at the stage of recording of the prosecution evidence.

 To ascertain the stage of the trial, the Commissioner of Police, Gurugram was directed to file the status report, which is filed on the record along with the affidavit of the District Attorney, Gurugram, wherein it is stated that the petitioner was arrested on 19.6.2017; challan

was presented on 5.9.2017 and the charges were framed on 24.10.2017. It is further stated that out of 22 prosecution witnesses, 14 have been examined and 04 have been given up and the case is at the stage of recording of remaining prosecution evidence.

Learned senior counsel for the petitioner has submitted that two of the co-accused, namely, Ravi and Pradeep have been granted the concession of interim bail by this Court vide order dated 14.6.2018 and 4.7.2018 and 03 other accused, namely, Vikas, Gaurav and Naveen have been granted regular bail by this Court vide separate orders.

Learned senior counsel has referred to the order dated 3.7.2019 granting regular bail to co-accused-Naveen, wherein the entire evidence of the prosecution was noticed. The operative part of the order reads as under :-

“Learned senior counsel for the petitioner submits that as per allegations in the FIR, got registered by Manju wife of deceased Yogesh, on 08.06.2017, one Ravi, petitioner-Naveen, Vikas, Gaurav, Munna and Pardeep came at the spot and told that they will take revenue of murder of Rahul. Upon this, husband of the complainant started running on motorcycle and thereafter, he climbed the roof of one Om Parkash. Ravi and petitioner Naveen were having axes in their hands and Munna fired from country-made pistol and Pardeep and Vikas, while following the husband of the complainant, also climbed on the roof. The complainant also reached the roof, where she saw that Pardeep and Vikas caught hold of her husband and Ravi and Naveen gave beatings to him with axes and Munna, by pointing the country-made pistol towards the complainant, threatened her that she will also be killed like this. Yogesh suffered injuries and died in the

incident and the present FIR was registered.

During the investigation, the police arrested Ravi @ Jitender on 11.06.2017 and thereafter, he remained confined in judicial lockup. On 19.06.2017, petitioner-Naveen, Vikas, Gaurav and Mukesh @ Munna were arrested and during the interrogation, they recorded their separate disclosure statements and on the basis of same, a country-made pistol, two axes, motorcycle and their clothes were recovered. Later, on the basis of investigation carried out by Assistant Commissioner of Police, Pataudi, Gurugram and upon recording the statements of respectables of the village, who stated that at the time of incident, Ravi was present at his house, he was found innocent. Similarly, the police found that Pardeep was present in a restaurant on NH-8, Dharuhera and on the basis of CCTV footage, he was also declared innocent. The police, thereafter, submitted the report under Section 173 Cr.P.C. against petitioner-Naveen, Vikas, Gaurav and Mukesh @ Munna.

Learned senior counsel for the petitioner has referred to the disclosure statement of petitioner Naveen, wherein the police recorded that the petitioner was carrying a country-made pistol and Gaurav and Vikas were carrying one axe each. Learned senior counsel has referred to later part of this statement, wherein it is stated that Vikas gave an axe blow on the head of Yogesh and thereafter, they all caused injuries to him. It is further submitted that in pursuance to this disclosure statement, a country-made pistol was recovered from the petitioner along with two live cartridges and the same were sent to the FSL, Madhuban. In the FSL report dated 09.03.2018, it is opined as under: -

“...The 7.65 mm fired cartridge case is without percussion cap. No other sufficient

comparable individual characteristic marks were available on it. Therefore, no definite opinion could be formed regarding its linkage with respect to country-made pistol marked as W/1 due to lack of sufficient comparable individual characteristic marks...”

Learned senior counsel has thus argued that even the country-made pistol recovered from the petitioner was not connected with the fired cartridges recovered by the police and therefore, it will be a debatable issue whether the same was used in the commission of crime.

Learned senior counsel has further argued that the petitioner is in judicial custody for the last two years and statement of the complainant PW3 Manju has already been recorded, in which she has supported the version given in the FIR and she named both the accused persons namely Pardeep and Ravi, who were found innocent by the police, in her statement as PW3. Thereafter, an application under Section 319 Cr.P.C. was moved, which was allowed and Ravi and Pardeep are summoned as additional accused on 24.04.2018 and therefore, it will take more time in conclusion of the trial, as the trial will start de novo after appearance of the aforesaid two persons before the trial Court.

Learned senior counsel for the petitioner has next argued that though as per the FIR, the petitioner was shown carrying an axe, however, the same was not recovered from him and was recovered from the co-accused and only a country-made pistol was recovered from the petitioner, which according to the FSL report, might not be used in the commission of offence.

In reply, learned State counsel has however argued that the complainant has appeared as PW3 and has supported the prosecution version and thereafter, two

persons namely Ravi and Pardeep have been summoned by the trial Court vide order dated 24.04.2018, however, the said order is under challenge in CRR-2082-2018, which is pending. Similarly, co-accused Ravi @ Jitender has also filed CRR-2147-2018, challenging his summoning under Section 319 Cr.P.C. and the same is also pending.

Learned State counsel, on instructions from ASI Krishan Pal, has further submitted that though five PWs have already been examined, however, no further evidence is recorded, in view of summoning of two additional accused persons namely Ravi and Pardeep.

After hearing learned counsel for the parties, I deem it appropriate to release the petitioner on regular bail, for the following reasons: -

(a) The petitioner is in judicial custody for the last two years; statement of the complainant PW3 Manju has already been recorded and there is no possibility of tempering with the prosecution evidence.

(b) After the summoning of two additional accused under Section 319 Cr.P.C. on 24.04.2018 no further evidence is recorded, as they have challenged their summoning before this Court, thus, conclusion of the trial will take some time and in the event of dismissal of their revision petitions, the trial will de novo start, as both these additional accused will have a right to cross-examine the prosecution witnesses.

(c) Considering the allegations in the FIR and the statement of PW3 Manju, wherein it is stated that the petitioner was armed with an axe, whereas as per the investigation, a country-made pistol was recovered from him, on his disclosure, which as per the FSL report, might not be used in the commission of crime and as per the injuries reported in the post-mortem report, there is

variation in the two versions, which can be decided at the time of final decision of trial.”

Learned senior counsel has then referred to another order dated 31.10.2019 vide which the regular bail was granted to the co-accused, namely, Vikas. The operative part of the order reads as under :-

“Learned senior counsel for the petitioner further argues that complainant Manju, while appearing as PW-3, has reiterated the version given in the FIR that that Pardeep and petitioner Vikas had caught hold of her husband and Ravi and Naveen were causing injuries to her husband with their respective axes and even in the postmortem report, injuries caused by the axes have been given as the cause of death of deceased Yogesh.

It is further submitted that the attribution to co-accused Gaurav that he was instigating the other accused to kill the complainant is an improvement on her part and it is not mentioned in the FIR.

However, learned State counsel, on instructions from the Investigating Officer, as well as learned senior counsel have opposed the grant of bail to the petitioner.

Learned senior counsel for the complainant submits that it was a case of revenge murder as the husband of the complainant was undergoing life imprisonment on account of committing murder of Rahul, who was the real brother of co-accused Ravi and, therefore, a motive is attributed in the FIR itself.

Learned senior counsel for the complainant further refers to aforesaid order dated 03.07.2019 to submit that it was observed by this Court that petitioner has given an axe blow on the head of Yogesh.

Learned senior counsel for the complainant further

argues that the accused persons, who have been released on bail, are trying to influence the prosecution witnesses as PW-1 Jitender, in his cross-examination, has not identified the accused persons present in Court as the assailants, who have taken away his motorcycle on the date of incident, which was allegedly used to chase the deceased.

Learned State counsel has placed on record the affidavit of the SI/Investigating Officer, Crime Branch, Bilaspur, Gurugram, along with the statement of the prosecution witnesses recorded so far.

A perusal of the statement of PW-1 Jitender shows that he has stated that few persons stopped his motorcycle and forcibly took it away and in this regard, he has lodged a complaint in the police station concerned. Though, in ordinary course, the public prosecutor was required to ask a specific question to this witness as to whether the accused persons present in Court are the same persons who have taken away his motorcycle, however, no such question was asked which shows negligence on his part but in cross-examination, the said question was specifically asked by the defence counsel, to which, this witness has denied that these are not the persons who have taken away his motorcycle.

In the statement of PW-3/complainant Manju, as noticed above, she has not attributed any injury to the petitioner and has stated that the petitioner, along with co-accused Pardeep, had caught hold of her husband.

It is also worth noticing that PW-4 Ajit Singh, in his statement, has stated that family members of deceased Rahul have eliminated Yogesh, however, he has not given any description of family members of Rahul except that Ravi is the real brother of Rahul and it is not stated that petitioner is one of the family members of Rahul and this

fact is also missing in the statement of PW-3/complainant. Therefore, it is the moot point to be decided in trial if any motive is attributed to the petitioner.

The remaining witnesses are the official witnesses including the doctor who conducted the postmortem.”

Learned senior counsel for the petitioner has, thus, argued that despite the fact that the petitioner is in custody for the last more than 03 years, the evidence is not concluded and the prime accused have already been granted the concession of regular bail, therefore, the petitioner be granted the concession of regular bail on account of his long custody. Learned senior counsel has also submitted that since the two accused, namely, Ravi and Pradeep, who were summoned under Section 319 Cr.P.C. have filed Criminal Revision before this Court and in which they have granted interim anticipatory bail and the said petition is still pending, it may take some more time for disposal of the trial on that count.

Learned State counsel has not disputed the factual position, however, submitted that as per the allegations in the FIR, the petitioner allegedly hit the motorcycle of the deceased with a car to stop him and, thereafter, when deceased reached on the roof of Om Parkash, all the accused reached there and caused injuries to him.

Learned senior counsel also submits that after recording of some prosecution evidence, an application under Section 319 Cr.P.C. for summoning the two witnesses, namely, Ravi and Pradeep was allowed and the next date for recording prosecution evidence is 10.7.2020.

I have heard learned counsel for the parties.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last more than 03 years and all similarly situated accused have been released on bail and also considering the fact that the complainant and the other private witnesses have already been examined and only official witnesses are to be examined, for which, despite availing 06 months time, first application was dismissed as withdrawn; the prosecution is not able to conclude the evidence, 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/Illaqa Magistrate/Duty Magistrate.

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

July 08, 2020
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Whether speaking/reasoned : Yes/No
Whether reportable: : Yes/No