

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M- 22121 of 2020 (O&M)

Date of decision : 11.9.2020

...

Pawan

.....Petitioner

vs.

State of Haryana

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. H.P.S. Ishar, Advocate for the petitioner.

Mr. Tanuj Sharma, Assistant Advocate General, Haryana.

...

H. S. Madaan, J. (Oral)

Case taken up through video conferencing.

CRM-22789-2020

This is an application for exemption from filing certified copy of Annexures P-9 to P-11 and for placing the same on record.

The application is allowed.

Annexures P-9 to P-11 be taken on record subject to all just exceptions.

Main case.

This second petition for regular bail has been filed by petitioner – Pawan, aged about 26 years, an accused in FIR No. 1082 dated 18.10.2016, for offences under Sections 148, 149, 302, 307, 120-B IPC and Section 25 of the Arms Act, registered at Police

Station City Gurugram. The first petition filed by him bearing CRM-M-5901 of 2020 (O&M), alongwith such petition filed by co-accused Braham Parkash bearing CRM-M-44355-2018, was dismissed by this Court vide order dated 18.2.2020.

In nutshell, the prosecution story is that the FIR in this case was recorded on the basis of statement of complainant Karan Singh son of late Sh.Lakhi Chand, resident of House No.310/25, Shakti Nagar, near Pataudi Chowk, Gurugram, who inter alia stated that he had got four children i.e. three sons and one daughter; his elder son Manish Kumar @ Pappu was engaged in the business of dairy farming and sale of liquor; he had a liquor vend near New Colony turning, old Railway Road, opposite Prem Mandir; on 17.10.2016 at about 9:00/10:00 p.m. while the complainant was sitting at such liquor vend, then at about 11:45 p.m. son of the complainant Manish Kumar @ Pappu along with his driver Sukhvir and Liyaqat came to the liquor vend in his Hyundai Creta car to collect cash; the car was being driven by Sukhvir and Manish @ Pappu was sitting on the front seat whereas Liyakat was sitting on the rear seat; the moment the car stopped in front of the liquor vend and Kamlesh Salesman took cash near the car, in the meanwhile 8- 10 young persons having weapons came there and started indiscriminate firing on Manish @ Pappu and other two occupants of the car; Manish @ Pappu suffered gun shot injuries on his head, chest and abdomen; Sukhvir and Liyaqat also suffered injuries; thereafter the assailants ran away from the spot in two cars, one of which was of make Swift, white in colour,

whereas the details of the other car could not be given by the complainant; the complainant informed Ravi Kumar, a bother-in-law of Manish @ Pappu regarding the incident, who immediately reached the spot and took injured to Medhanta Hospital, however, the doctors there declared Manish @ Pappu brought dead, whereas Sukhvir and Liyaqat were admitted in the hospital for treatment; the motive for the incident was that there has been enmity between family of the complainant and family of Sandeep Gadauli and Kaushal of Naharpur, Gurugram; when Sandeep Gadauli was cremated at that time, his brother Kuldeep, Braham Parkash(present petitioner) and sister Sudesh had announced that they would not allow family of complainant to celebrate Diwali festival.

The complainant in his statement to the police further stated that he was sure that Kuldeep, Braham Parkash and Sudesh, residents of village Gadauli besides Kaushal and his brother Manish and Amit Dagar were involved in murder of Manish @ Pappu son of the complainant. He stated that he could identify the persons, who had fired shots at his son.

The petitioner-accused was arrested in this case. He had filed a petition for grant of regular bail in the Court of Sessions, but was unsuccessful there, as such he had approached this Court with the similar request, which was declined earlier as mentioned Supra.

Now, he has approached this Court again craving for being released on bail, mainly for the reason that co-accused of the present petitioner namely, Deepak has been granted the concession of regular

bail by a Co-ordinate Bench, vide order dated 7.9.2020, copy of which being Annexure P-11. His such request is being opposed by the State counsel.

I have heard learned counsel for the petitioner, learned State counsel, besides going through the record.

While dismissing the first petition for grant of regular bail by the present petition, the contention of State counsel was noticed to the effect that petitioner Pawan is an active member of Gadauli Gang and if he is released on bail there is reasonable apprehension of his absconding and trying to influence the prosecution witnesses by giving threats and by use of force.

Neither there is any change in circumstances since dismissal of the first petition for bail, nor there is any reason to disagree with the apprehension of the State counsel to the similar effect.

As regards the petitioner seeking bail on the ground of parity, for the reason that his co-accused Deepak has been granted this concession by a co-ordinate Bench, this submission is not acceptable. For the purpose of grant of regular bail, various factors are to be taken into consideration, which include the age of the accused; whether he has got any past criminal record or he is a first offender; whether he would appear in the Court regularly or there are chances of his absconding or running away from the process of law; whether there is reasonable apprehension of his trying to intimidate the prosecution witnesses or giving any allurement to them etc. All these factors are to be taken into consideration and merely for the reason

that the co-accused has been released on bail, does not make out a case for grant of similar concession to the other co-accused, since two accused cannot be similarly placed in all the aspects.

As regards the accused being not named in the FIR and his name having cropped up in the statement of the co-accused, that also does not help the petitioner much. The FIR is not a substantive piece of evidence. Its only purpose is to set the criminal machinery into motion. The FIR may not contain the details of the incident and furthermore any person can report commission of a cognizable offence to the police. It is only after registration of the FIR when the matter is investigated, then the whole thing gets unfolded to wit, which persons had planned and executed the crime, the role played by each person; the motive for the crime, the weapon used etc. Merely for the reason that a person is not named in the FIR, does not create any favourable circumstance to him. Similarly, if during interrogation of an accused, he discloses the manner in which the crime was committed and the other persons involved in commission of the crime, then the statement made by such accused to the police can certainly be taken into consideration for furtherance of investigation. Even otherwise Section 30 of the Indian Evidence Act, 1872, makes confession of accused affecting himself and some other persons, to be admissible. Therefore, the petitioner-accused cannot take advantage of the fact that his name had cropped up as a participant of crime in the statement of co-accused only. However, as per the police investigation, the involvement of the present petitioner

in the incident has been found to be there.

One more factor to be taken into consideration is that outbreak of pandemic Covid-19, has affected almost the entire world, bringing life to a stand still for some time and therefore reducing activities substantially. The functioning of the Courts has also been affected to some extent. However, hopefully, things will improve in near future and normal activities including functioning of the Courts would be there. The prosecution cannot be blamed for non-producing the evidence during the trial and similarly the Courts cannot be held responsible for delay in conclusion of proceedings. It may be observed here that criminals accused of heinous crime, like murder cannot possibly take advantage of the present situation and start pleading for grant of bail.

Thus there is absolutely no reason to accept the present petition. The same stands dismissed accordingly.

However, nothing discussed above shall have any bearing on the merits of the case.

11.9.2020
chugh

(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No