

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-23318-2020

Date of Decision: 14.10.2020

Dinesh Dahiya

...Petitioner

vs.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice B.S. Walia.

Present: Mr. K.D.S. Hooda, Advocate for the petitioner.

Mr. Surender Singh, Asstt. AG, Haryana.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to the outbreak of pandemic Covid-19.
2. Prayer in the third petition under Section 439Cr.P.C., is for grant of regular bail to the petitioner during pendency of trial in case FIR No.191 dated 31.05.2029, registered under Sections 307, 323 and 34 IPC, 1860 and Sections 25/27/54/59 Arms Act, 1959, at Police Station Kharkhoda, District Sonipat.
3. It needs noticing here that the first petition under Section 439 Cr.P.C., bearing CRM-M-47951-2019 was dismissed on 22.05.2020, by taking into account that the trial was almost at the stage of conclusion and only four prosecution witnesses remained to be examined and in the circumstances, the learned trial Court was directed to take steps to conduct

examination of the remaining witnesses expeditiously, preferably on the next date i.e. in July 2020 itself and to conclude the trial within four months.

4. The second petition i.e. CRM-18732-2020, was filed for interim bail for providing treatment to the petitioner's father, but the same was dismissed on 23.07.2020, by taking into account the statement of petitioner's father that he was being well looked after by his wife.

5. Notice was issued in the third petition for bail on 07.09.2020 for 14.10.2020 while noticing the plea that the petitioner was in custody since 02.06.2019, victim had since been discharged from hospital on being declared fit and that while charges had been framed, trial was not progressing on account of Covid-19 pandemic.

6. Learned counsel contends that the petitioner has been implicated in a false case on account of matrimonial discord between the petitioner and his wife, that the petitioner and his wife were living separately but on the *bhog* ceremony of the petitioner's grand-mother, the petitioner's wife forcibly came to attend the said ceremony along with her relatives and created disturbance during which the petitioner's wife's aunt i.e. *mausi*, sustained a gunshot wound in the stomach from a pistol wielded by the complainant due to altercation with the petitioner, that the FSL report mentioned that the place of occurrence was examined thoroughly after the incident but no physical clue relating to the crime could be detected, that the petitioner had been in custody since 02.06.2019 and that continued detention of the petitioner despite trial not progressing on account of coronavirus pandemic violated the petitioners right under Article 21 of the Constitution of India as the petitioner had a right to a speedy trial- Babba v. State of Maharashtra, (2005) 11 SCC 569, Vivek Kumar v. State of U.P., (2000) 9

383], that bail was the rule and committal to jail an exception as laid down in State of Rajasthan vs Balchand, (1977) 4 SCC 308, that any condition could be imposed to ensure presence of the petitioner to face trial and undergo punishment if convicted, that the petitioner was not a previous offender, besides, undertook to maintain good behaviour while on bail. Reliance has also been placed on the decision of Hon'ble the Supreme Court in Sanjay Chandra Vs. CBI, Criminal Appeal No.2178 of 2011.

7. Learned Assistant Advocate General on the other hand has opposed the grant of bail on the ground of petitioner being accused of a serious offence of having inflicted a pistol shot injury on the stomach of Mausli of his wife. Learned Asstt. AG, Haryana, further contends that out of twenty two prosecution witnesses (not twenty three as recorded in order dated 22.05.2020) fourteen had been examined (not nineteen as recorded in order dated 22.05.2020) and that only eight prosecution witnesses remained to be examined and the trial was now fixed for 15.12.2020.

8. I have considered the submission of learned counsel for the parties.

9. No doubt, the petitioner is accused of a serious offence though there is version and counter version of the incident. However, the petitioner is in custody since 02.06.2019. Investigation has been completed, charges framed and fourteen out of twenty two prosecution witnesses examined. Vide order dated 22.05.2020, petitioners prayer for regular bail was rejected on the ground that the trial was almost at the stage of conclusion and only four prosecution witnesses remained to be examined, therefore, direction was issued to the learned trial Court to conclude the examination of the remaining prosecution witnesses, as expeditiously as possible preferably by

months. However, it has been brought to the notice of this Court that till date eight prosecution witnesses remain to be examined and the trial is not progressing on account of coronavirus pandemic though the trial of the case is now fixed for 15.12.2010. Taking into account all aspects of the matter but without commenting upon the merits of the case, the petition for regular bail is allowed and the petitioner ordered to be released on regular bail during the pendency of the trial provided he is not required in any other case and subject to his furnishing adequate bail/surety bonds to the satisfaction of the learned CJM/Trial Court/Duty Magistrate, concerned besides subject to the following conditions :

- i) Petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts or the case so as to dissuade him from disclosing such facts to the Court or any other authority ;
- ii) Petitioner shall remain present before the trial Court on each and every date fixed for the hearing of the case ;
- iii) Petitioner shall surrender his passport, if any (if not already surrendered), and in case, he has not been issued a passport, he shall submit an affidavit to said effect before the learned trial court / Chief Judicial Magistrate/Duty Magistrate.
- iv) Petitioner shall mark his attendance in the concerned police station having jurisdiction over his place of residence once a week and shall not

go to the area of residence of his estranged wife /
in laws for any reason whatsoever.

v) Prosecution would be at liberty to move an
application for modification / recall of order of bail,
if for any reason, the petitioner violates any of the
conditions imposed by this Court.

(B.S. Walia)
Judge

October 14, 2020
'Amit-Rajesh'

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