

205-2

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.2429 of 2021 (O&M)

Decided on: 30.09.2021

Ramesh

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Vinod Ghai, Sr. Advocate
with Mr. Edward Augustine George, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

Mr. Vineet Chaudhary, Advocate for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this 3rd petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.44 dated 13.02.2017, for offence punishable under Section 365 of the Indian Penal Code (in short 'IPC') (Sections 364, 302, 201, 120-B, 450, 511, 506 IPC and Section 25 of the Arms Act added later) registered at Police Station City Gohana, District Sonapat.

The earlier one were dismissed as withdrawn vide order dated 07.12.2018 and dated 02.03.2020 passed in CRM-M No.33205 of 2018 and CRM-M No.2337 of 2020, respectively.

Learned senior counsel for the petitioner has relied upon the order dated 04.01.2021 passed in CRM-M No.20649 of 2020, vide which the co-accused Ram Karan was granted bail. The operative part

of the said order, reads as under:-

“Counsel for the petitioner has argued that as per the allegations in the FIR, registered at the instance of Prehlad son of Kehar Singh, it is stated that on 11.02.2017, he had gone to his in-laws house in village Rukhi where he was informed that his brother-in-law Balbir Singh had gone to Chopra Colony, Gohana. Thereafter, he came back and on 13.02.2017, he again went to village Rukhi and was informed that his brother-in-law Balbir Singh has not returned back. Thereafter, he looked for him by making enquiries from some persons and information was given to the police for registration of the FIR.

Counsel for the petitioner has further submitted that thereafter, an SIT was constituted and during the investigation of FIR No.100 of 2017 registered under Sections 332, 353 and 307 IPC at Police Station Tilak Nagar, New Delhi, the police arrested 04 persons namely Ramesh @ Mesha Pehalwan, Sushil @ Sheela, Sushil @ Ullu and Amit @ Lamba and they made their disclosure statements before the police that they in conspiracy with their accomplices had murdered Balbir Singh, Sandeep Badwasani and Surender Rathi on 11.02.2017 at Gohana by fire-arms.

The police, thereafter, investigated the case further and another FIR No.55 of 2017 was also registered at Police Station Sadar Sonapat. The petitioner was arrested in both the FIRs on the basis of the disclosure statement made by one of the co-accused Rajesh @ Sarkari.

Counsel for the petitioner has further argued that the petitioner is in custody since 21.06.2017 and out of 69 prosecution witnesses, 08 PWs including the complainant Prehlad as well as 03 prosecution witnesses who were cited as an eye-witnesses namely Ashu, Kuldeep and

Sachin, have already been examined as PW-3 to PW-6.

Counsel for the petitioner has also submitted that all the 03 witnesses were declared hostile as they did not support the prosecution version and when they were cross-examined by the Public Prosecutor and were confronted with their statements, they have even declined having made any such statement.

Counsel for the petitioner has further submitted that even in the statement of Prehlad, who appeared as PW-4, it has come that he was informed by his brother-in-law that he was under threat from the petitioner and one Boda. It is further submitted that Prehlad has further stated that the aforesaid 03 persons were killed in the house of Boda at Chopra Colony, Gohana by the petitioner – Ram Karan, Naresh, Jasbir, Sonu Malik Inspector Gandhra, Satyawar Malik Gandhra, Vicky Chittana, Ajit Fauji, Ramesh @ Meesa, Vijay Farmana, Amit @ Lamba, Sheela Sarpanch, Rajesh @ Sarkari, Boda and his wife.

Counsel for the petitioner has also submitted that Naresh was declared innocent whereas 02 persons namely Boda and Satyawar Malik have died during the course of trial.

Counsel for the petitioner has placed on record the orders granting regular bail to Jasbir, Ajit Fauji, Amit @ Lamba, Sheela Sarpanch as well as Rajesh @ Sarkari on whose disclosure, the petitioner was nominated as an accused.

Counsel for the petitioner has further relied upon the order dated 15.09.2020 vide which the petitioner was granted bail in FIR No.55 of 2017 wherein certain observation was made and this fact was noticed that Rajesh @ Sarkari has been granted the concession of bail on whose disclosure statement, the petitioner was nominated as an accused in the present case.

Counsel for the petitioner has, thus, argued that

considering the fact that the entire case is based on circumstantial evidence and 03 of the witnesses have been declared hostile and it will be matter of trial as to how the statement of Prehlad is to be appreciated as the counsel for the petitioner submits that it is a hear-say evidence.

Counsel for the petitioner has also placed on record the orders Annexures A-3 to A-10, vide which he has been either granted the concession of bail in other FIRs or has been acquitted by the trial Court after facing the full length trial, in the cases which are mentioned in the custody certificates filed by counsel for the State.

Counsel for the State, assisted by counsel for the complainant, has however, opposed the prayer for bail on the ground that the petitioner is involved in some other FIR but could not dispute the fact that either he is on bail or he has been acquitted in some of the cases.

Counsel for the complainant has further argued that if the petitioner is granted bail he may try to influence the prosecution witnesses, however, it is not disputed that all the private witnesses have already been examined and the petitioner is in custody for the last more than 3 ½ years. It is also not disputed that the petitioner was nominated on the basis of the disclosure statement of co-accused Rajesh @ Sarkari, who has already been granted the concession of regular bail in both the FIRs.

Counsel for the State also could not dispute the fact that in FIR No.100 registered at New Delhi, the petitioner is not nominated as an accused.”

For the sake of brevity, the facts are not reproduced again.

Learned senior counsel for the petitioner has further submitted that the allegations against the petitioner in this case are identical to that of the co-accused Ram Karan. It is further argued that the petitioner was also arrested in FIR No.100 dated 26.02.2017,

registered in New Delhi and during the investigation of the said case, the disclosure statement of the petitioner was recorded regarding committing of the offence. Thereafter, the petitioner was arrested in the present FIR No.44 on the basis of the production warrants on 04.03.2017 and simultaneously, he was also shown arrested in FIR No.55 and the police thereafter, recorded his statement, as well.

Learned senior counsel for the petitioner has also submitted that the petitioner is in custody for the last 04 years and 06 months and till date, the case is still at the stage of recording of the prosecution evidence and there are total 69 PWs cited in the list of witnesses.

Learned senior counsel for the petitioner has referred to the statement of PW-1 Ashu, PW-2 Snadeep and PW-3 Sachin, who did not support the prosecution version and were declared hostile.

Learned senior counsel for the petitioner has lastly, submitted that even in FIR No.100 registered at New Delhi, the petitioner stands acquitted and in one FIR No.402 where he was shown to be convicted for a period of 10 years, the petitioner stands acquitted by this Court vide judgment dated 04.11.2019 passed in CRA-S-No.1497-SB of 2018.

Counsel for the State on the basis of the Custody Certificate, could not dispute the factual position.

Counsel for the State on the basis of the affidavit of the Assistant Superintendent of Police, Sonapat, has further submitted that the petitioner was part of the conspiracy, which was hatched for commission of the offence and the petitioner along with the co-accused

has gone to throw the dead bodies of the deceased in Gang Canal in Uttar Pradesh, however, it is not disputed that 03 PWs have not supported the prosecution version and in majority of the cases, which are referred to in Para 10 of this affidavit, the petitioner either stands acquitted or has undergone the sentence.

After hearing the learned counsel for the parties, considering the fact that the petitioner is in long custody of 04 years and 06 months; the case is still at the stage of recording the prosecution evidence; 03 PWs have not supported the prosecution version and also in view of the fact that the petitioner stands acquitted in other FIRs and conclusion of the trial is likely to take some time, 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

30.09.2021

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