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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.7926 of 2021 (O&M)

Date of decision: 05.07.2021

Devender @ Nad

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Kulvir Narwal, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 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.145 dated 22.05.2020, for offence punishable under Sections 302, 34 of the Indian Penal Code, 1860 (in short 'IPC') registered at Police Station Salhawas, District Jhajjar.

Counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of the complainant Naresh, his brother Dharampal was unmarried and was residing in a room constructed in their fields. On 22.05.2020 in the morning, one Pawan told him that his brother is lying dead outside the room and thereafter, when he reached the fields, he saw was brother lying dead. Initially, he suspected that he has been killed by someone having a grudge against him. It is further submitted that later on, the supplementary statement of the complainant Naresh was recorded on 24.05.2020 i.e. after 02 days of the incident, in which he has stated that

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on 21.05.2020, when he had gone for a walk, he had seen 03 persons namely Deepak @ Durki, Niskarsh and Devinder (petitioner herein), drinking liquor near his fields. Now on enquiry, he has come to know that about 15-16 months ago, the co-accused Niskarsh and Rakesh had given beatings to a boy of village Amadalpur and when the police, after registration of the case, came for the investigation, the deceased Dharampal has disclosed the name of Niskarsh and Rakesh and due to that grudge, he has been murdered.

Counsel for the petitioner has further submitted that the petitioner was arrested on the basis of the disclosure statement of the aforesaid 02 accused persons that he was also part of the conspiracy and committed the murder of Dharampal. It is also submitted that now the FSL report has come and no blood stains were found either on the clothes or on the stick recovered from him.

Counsel for the State has filed the affidavit of the Investigating Officer wherein it is stated that the petitioner was arrested on 17.07.2020 on the basis of the disclosure statement of the co-accused Deepak @ Durki and Niskarsh, who were arrested on 01.06.2020 and 08.06.2020, respectively. It is further stated in the affidavit that the disclosure statement of all the 03 accused persons including the petitioner make out that they in conspiracy with each other have committed the murder of Dharampal by giving him beatings with sticks.

A perusal of the confessional statement of the petitioner – Devender show that after consuming liquor they went to Dharampal at his fields and saw him lying on cot and he started abusing them and

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then, they started giving beatings to him with wooden sticks.

A perusal of the statement of Deepak @ Durki, on the basis of which, the petitioner was nominated in the present FIR, show that when they reached in the fields of Dharampal, he was seen lying on a cot and they started beating him. It is not mentioned in the disclosure statement of Deepak @ Durki that Dharampal started abusing all the 03 accused persons and therefore, there is a variation in the 02 statements.

In reply, counsel for the petitioner has argued that at the first instance, the complainant Naresh has not named the petitioner or any other person and 02 other statements of Mainpal and Dharam Raj, is only to the extent that at midnight, they were consuming liquor together. It is, thus, submitted that it would be a matter of evidence whether in the alleged conspiracy, the petitioner has a meeting of mind with them or that any motive is attributed towards him. It is also submitted that the petitioner is in custody since 17.07.2020.

Counsel for the petitioner has further argued that though the petitioner is involved in one more case under Section 332 IPC, but he is on bail. It is also submitted that since the entire case is based on circumstantial evidence and the next date of hearing before the trial Court is 24.08.2021 and till date only 02 PWs have been examined and there is no possibility for the petitioner to tamper with any prosecution evidence.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody since 17.07.2020; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time due to COVID-19 situation,

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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

05.07.2021

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No