

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

CRM-M-13920-2021

Reserved on:17.11.2021

Pronounced on 18.11.2021

Bablu		Petitioner
	Versus	
State of Haryana		...Respondent

CORAM:HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Vinod Ghai, Senior Advocate with
 Mr.Edward Augustine George, Advocate
 For petitioner

Mr.Vishal Malik, Deputy Advocate General, Haryana

ASHOK KUMAR VERMA, J.

1. This petition has been filed under Section 439 of the Cr.P.C. for grant of regular bail to the petitioner in case FIR No.491 dated 04.09.2019 under Sections 365, 307 of the IPC and Section 25 of the Arms Act (Sections 302, 201 of the IPC added later on), registered at Police Station Meham, District Rohtak.

2. Precisely, the case of the prosecution is that on 03.09.2019, complainant-Sachin @ Bholu along with Mohan (deceased) son of Jai Singh were going towards Bus stand from the fields, when a phone call of the petitioner was received by deceased Mohan as he wanted to meet him at Bus stand of village Sisar Khas. Then at the said bus stand petitioner and Sunil son of Somvir and Monu son of Rajbir alias Manthan met them where they talked with each other till 1:00 AM at night. Then the complainant and his companion Aman son of Ranbir resident of Sisar Khas, Mohan and

Rohit son of Sudhir sat in Mohan's car to drop Sunil to his house and petitioner was on a motor-cycle behind them. At around 1:15 AM when they reached in front of petitioner's house, then Naveen son of Bed Singh and Sunil alias Kala son of Sajjan Singh were already standing who started beating the complainant. Petitioner, his brother Sunil, Naveen son of Bed Singh and Sunil alias Kala started beating the complainant then his companion Mohan, Aman and Rohit son of Sudhir tried to rescue the complainant, then Naveen son of Bed Singh fired upon them. As a result, the complainant and Mohan were hit by bullet. The accused persons took away Mohan in the vehicle. Ultimately, the dead body of the deceased Mohan was found at Dadri Bhiwani railway line village Manheru.

3. Initially, the FIR was registered under section 365 and 307 of the IPC and 25 of the Arms Act and lateron, section 302 and 201 of the IPC were added.

4. Learned counsel for the petitioner, *inter alia*, submits that the petitioner is falsely implicated in the present case. As per the version of the FIR, the petitioner was empty handed and has not given any gun-shot injury to anyone. No injury has been attributed to the petitioner. The only role attributed to the petitioner as alleged in the FIR is that he had called the deceased Mohan from his phone and he along with others had assaulted the complainant. He is in custody since 10.10.2019. The trial is likely to take a long time and nothing is to be recovered from him.

5. *Per contra*, learned counsel for the State vehemently submits that the petitioner has been involved in a murder case. His

name has been specifically mentioned in the FIR. Although, the petitioner may not have fired the fatal gun-shots, he was actively involved in the assault upon the complainant and the victim Mohan whose dead body was found at the railway track. Learned State counsel further submits that there is another FIR No.445 dated August 05, 2017 under Sections 148/149/323/452/506 IPC at P.S. Meham registered against the petitioner. Learned counsel further submits that challan under section 173 of the Cr.P.C. has already been filed and the charges against the petitioner and the other co-accused have already been framed by the trial court and now, the case is fixed for prosecution evidence before the trial Court. As such, the petitioner does not deserve concession of regular bail.

6. I have heard learned counsel for the petitioner and the State and have gone through the paper-book. I am not impressed with the submissions of the learned counsel for the petitioner.

7. Apparently, the petitioner has been specifically named in the FIR. It is alleged in the FIR that the petitioner called deceased Mohan through his phone and told him that he wanted to meet him at the aforesaid bus stand. The prosecution story of commission of heinous crime resulting into fatal murder of Mohan is alleged to have generated from the telephonic call made by the petitioner. The petitioner alongwith others are alleged to have given assault. Furthermore, place of occurrence was inspected by FSL team. From the spot, three empty cartridges and blood-stained soil were found which were collected. Site plan was prepared. Post-mortem of the dead body was conducted. As per disclosure statement of accused

persons made on 10.09.2019, accused Naveen, Sunil alias Kala and the petitioner's brother Sunil were taken out of lock-up from Police Station and they demarcated the place where they had put dead body of deceased Mohan at Dadri-Bhiwani railway line village Manheru. As per disclosure made by co-accused Naveen, it transpires that he, Sunil @ Kala and petitioner's brother- Sunil took the deceased Mohan in the car and threw his dead body at the aforesaid railway track. The petitioner is alleged to be an accomplice in the murder, as per the story of the prosecution. Further, the petitioner has bad antecedents as one more FIR was registered against him.

8. Moreover, the Hon'ble Supreme Court has come down heavily in case of grant of regular bail involving heinous crimes like murder. In the case of ***Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P.***, (1978) 1 SCC 240, Hon'ble Supreme Court has observed and held that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. The nature of the charge is a vital factor and the nature of the evidence is also pertinent. The severity of the punishment to which the accused may be liable if convicted also bears upon the issue. Another relevant factor is whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being. The Court has also to consider the likelihood of the applicant interfering with the witnesses for the prosecution or otherwise polluting the process of justice. It is further observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether

he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

9. In the case of *Mahipal vs. Rajesh Kumar*, (2020) 2 SCC 118, where the High Court released the accused on bail in a case for the offence under Section 302 of the IPC and other offences recording the only contention put forth by the counsel for the accused and further recording that “taking into account the facts and circumstances of the case and without expressing the opinion on merits of case, the High Court deemed fit just and proper to enlarge/release the accused on bail”, while setting aside the order passed by the High Court granting bail, the Hon’ble Supreme Court observed as under:-

“11. Essentially, this Court is required to analyse whether there was a valid exercise of the power conferred by Section 439 of the Cr.P.C. to grant bail. The power to grant bail under Section 439 is of a wide amplitude. But it is well settled that though the grant of bail involves the exercise of the discretionary power of the court, it has to be exercised in a judicious manner and not as a matter of course. In *Ram Govind Upadhyay v. Sudarshan Singh* (2002) 3 SCC 598, Umesh Banerjee, J. speaking for a two-Judge Bench of this Court, laid down the factors that must guide the exercise of the power to grant bail in the following terms:-

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always

vary from case to case.... The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which

the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.”

10. Keeping in view the overall facts and circumstances of the present case, the chain of events in commission of offences as depicted in the prosecution story and having regard to the gravity, heinousness of crime and seriousness of the allegations of murder and prima facie involvement of the petitioner-Bablu in the commission of offence as also the antecedents of the petitioner against whom one more FIR was registered, coupled with the material gathered during investigation and thereafter framing of charges by the trial court and applying the law laid down by the Hon’ble Apex Court in the aforesaid decisions on grant of regular bail, I do not deem it a fit case for grant of concession of regular bail to the petitioner.

11. The petition is dismissed accordingly. However, it is made clear that nothing observed in this order would be taken as an expression of opinion on the merits of the case, which would only be ascertained during trial.

(ASHOK KUMAR VERMA)
JUDGE

18.11.2021

MFK

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No