

[226] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.23467 of 2021
Date of decision: 19.07.2021

Karambir @ Bittu Petitioner

Versus

State of Haryana Respondent

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

Present: Mr. Karanvir Singh Khehar, Advocate for the petitioner.
Mr. Naveen Kumar Sheoran, DAG, Haryana.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.

2. Prayer in the petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.20 dated 18.01.2008, registered under Sections 307 read with Section 34 IPC and Section 25 Arms Act, 1959 at Police Station Sadar Gurugram, District Gurugram.

3. Learned counsel contends that the petitioner was implicated in the instant case on the allegation that on 18.01.2008, the complainant (i.e. Sahab Kaur's) husband Nand Kishore was fired upon near their house by one Dinesh who had come on motorcycle sitting in the center with two boys and the shot fired by Dinesh hit the husband of the complainant in his chest besides said accused fired two shots in the air while another accused sitting behind Dinesh had also tried to fire but because of arrival of people, all the accused fled away leaving behind one country made pistol and that on receipt of complaint, a case under Section 307 read with Section 34 IPC and Section 25 Arms Act, 1959

was registered. Learned counsel contends that during investigation, co-accused Mahipal was arrested on 10.05.2008 while on 18.06.2008, petitioner-Karambir and his co-accused namely Sandeep and Rajesh were arrested, that Sandeep got the motorcycle recovered used in the crime which was driven by the petitioner-Karambir, that on completion of investigation, challan was submitted against the accused on 07.08.2008 but accused Dinesh has not been arrested till date. However, during the pendency of the trial, the petitioner-Karambir who was released on regular bail was declared a proclaimed offender by the Court of the learned Additional Sessions Judge, Gurugram on 19.10.2009 besides, the petitioner was involved in another criminal case arising out of FIR No.241 dated 17.06.2008 registered at Police Station Sadar, Gurugram wherein he was declared proclaimed offender on 19.10.2009 and was re-arrested in said case on 15.01.2021 as he was already in custody in case FIR No.334 dated 19.06.2019 under Section 174-A IPC at Police Station City Ballabgarh.

4. Learned counsel for the petitioner contends that the petitioner was granted bail in case FIR No.241 dated 17.06.2008 registered at Police Station Sadar, Gurugram in which he was declared a proclaimed offender on 19.10.2009, vide order Annexure P/3 dated 20.04.2021 on the ground that the he was in custody since 15.01.2021, no further recovery was to be effected from him and trial would take long time and further incarceration would serve no purpose, besides, the petitioner had given undertaking to appear before the Court on each and every date of hearing. Learned counsel further contends that the petitioner could not appear before the learned trial Court since the

complainant's son Kaushal who is a known gangster had 33 criminal cases registered against him as per the details given in Annexure P/5 including many cases under Section 302 IPC and due to fear on account of threat of elimination, the petitioner did not appear before the learned trial Court. Learned counsel further contends that two of the co-accused namely Mahipal and Rajesh already stand acquitted by the learned trial Court vide order, Annexure P/8 dated 14.10.2010 while taking into account that summons in the name of PWs Sahab Kaur, eye-witness and Nand Kishore, injured had been received back with the report of the Sarpanch that Sahab Kaur and Nand Kishore were not coming to their house for the last many days and that their whereabouts were not known and similar reports were received on summons for the dates 30.11.2009, 04.01.2010, 22.01.2010, 20.02.2010, 17.03.2010, 01.04.2010 and 22.05.2010, therefore, on account of non-availability of whereabouts of PWs as per summons report, learned Additional Sessions Judge, Gurgaon closed the prosecution evidence. The learned Additional Sessions Judge, Gurgaon was pleased to observe that the prosecution had failed to produce incriminating facts and circumstances necessitating recording of statements of accused under Section 313 CrPC. Accordingly, in the aforementioned circumstances, co-accused Mahipal and Rajesh were acquitted.

5. Learned counsel further contends that the learned Additional Sessions Judge, Gurugram while granting bail to the petitioner in case FIR No.241 dated 17.06.2008 registered under Sections 398 and 401 IPC and Arms Act at Police Station Sadar Gurugram on account of his having been declared a proclaimed offender was pleased to take into account the

submissions that the petitioner could not attend the Court due to fear of gangster Kaushal from whom he was receiving repeated threats.

6. Per contra, learned DAG contends that though the petitioner was released on regular bail in the instant case by the learned Additional Sessions Judge, Gurgaon vide order, Annexure P/2 dated 15.10.2008 but was declared a proclaimed offender by the Court of the learned Additional Sessions Judge, Gurugram vide order dated 19.10.2009, and was apprehended only on 15.01.2021, therefore, he is not entitled to the concession of bail.

7. I have considered the submissions of learned counsel for the parties. Admittedly, the allegations against the petitioner is of his being the driver of the motorcycle on which two other co-accused namely Rajesh and Dinesh were riding out of whom co-accused Dinesh who was sitting in the center on the motorcycle fired from a country made pistol which hit Nand Kishore, husband of the complainant on the right side of his chest, besides, Dinesh fired two more shots in the air. There is no allegation of the petitioner having fired a gun shot or having inflicted injury on the husband of the complainant and the only allegation against him is of driving the motorcycle. Secondly, the reason given by the petitioner for not attending the trial was on account of threat of elimination held out by gangster Kaushal i.e. the son of the complainant and victim, who as per the details given in Annexure P/5 was facing 33 criminal cases including many cases under Section 302 IPC.

8. Learned State counsel has not disputed that the complainant's son gangster Kaushal was involved in 33 criminal cases including many cases under Section 302 IPC.

9. Accordingly, taking into account the position noted above as also that despite the complainant and her husband victim having been issued summons to appear before the learned trial Court on three occasions, they did not appear in Court I am of the view that no useful purpose would be served by keeping the petitioner behind bars. Accordingly, the petition for regular bail is **allowed** and the petitioner is ordered to be released on regular bail, during trial subject to his furnishing bail/surety bonds to the satisfaction of the learned CJM/Trial Court/Duty Magistrate, concerned, provided he is not required in any other case. The petitioner shall also abide by the conditions contained in Section 437(3) Cr.P.C. However, nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case.

10. Needless to mention, in case the petitioner is involved in any other case during the period while he is on regular bail in the instant case or does not appear before the learned trial court to face trial, the prosecution would be at liberty to move an application for cancellation of bail granted to the petitioner in the instant case.

11. Petition disposed of in the aforementioned terms.

(B.S. Walia)
Judge

19.07.2021

'Rajneesh/Amit'

1. Whether speaking/reasoned: Yes/No.
2. Whether reportable: Yes/No.