

212

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.24909 of 2021 (O&M)

Date of decision: 09.07.2021

Sandeep Jogi

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. S.K. Garg Narwana, Sr. Advocate
with Mr. Vishal Garg Narwana, Advocate
and Mr. Japjit Singh Johal, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 2nd 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.461 dated 16.05.2017, for offence punishable under Sections 148, 149, 302 of the Indian Penal Code, 1860 (in short 'IPC') and 25 of the Arms Act (Sections 148, 149 IPC stands deleted and Section 34 IPC was added later), registered at Police Station Jind City, District Jind.

The earlier petition i.e. CRM-M No.19002 of 2019, was dismissed on 03.03.2020 by passing the following order:-

“As per allegations in the FIR, registered at the instance of Ranbir Singh, he is doing the business of property dealing and has opened an office with Kamal, Sandeep, Jogender and Ajay. It is further stated in the FIR that there was a dispute regarding money between Sandeep Jogi and Jogender, first cousin of the complainant. Jogender was demanding money from Sandeep Jogi but instead of giving the money, he was

CASE HEARD THROUGH VIDEO CONFERENCING

threatening Sandeep Jogi. On 16.05.2017, Sandeep, Jogender, Kamal, Ajay and the complainant were present in the office and after some time, Amit Jogi and Kala Pega along with Sandeep, Amit and two other boys including Amit Penga, who were sitting in a car, came there and Sandeep stated that he will teach a lesson for demanding money and he fired towards Jogender with an intention to kill, which hit him on his chest and shoulder. Amit Jogi, Kala Pega and one another boy pointed their weapons towards the complainant and another and threatened that in the intervene, they will also be killed. Later on, Jogender died on the way, while he was being taken to PGIMS, Rohtak.

Learned State counsel, on instructions from ASI Jasvir Singh, submits that all the 20 prosecution witnesses have been examined and after recording the statement under Section 313 Cr.P.C. and defence evidence, the case is now fixed for final order today itself.

In view of the above, present petition is dismissed.”

Learned senior counsel for the petitioner has referred to the subsequent zimini orders passed by the trial Court to submit that the prosecution evidence was closed on 09.07.2019 and thereafter, the case was fixed for defence evidence and argument. Learned senior counsel for the petitioner has further referred to the order dated 03.09.2020 onwards to till date, to submit that the defence evidence is not concluded as during the intervening period, due to COVID-19 situation, sometimes the co-accused were not produced by the jail authorities and sometimes, notices were issued to the jail authorities for their production. It is further submitted that the petitioner is in custody for the last 04 years, 01 month and 13 days including remissions and the case is still at the stage of defence evidence and arguments, though, the prosecution evidence is concluded in July, 2019.

Learned senior counsel for the petitioner has also referred to the decision of the higher power committee regarding release of

CASE HEARD THROUGH VIDEO CONFERENCING

certain convicts, who were sentenced to imprisonment for a period of 07 years by granting special parole and submits that in the present case since the petitioner has undergone judicial custody of more than 04 years during the trial, he may be released on bail.

Learned senior counsel for the petitioner has further submitted that there are certain discrepancies in the version given in the FIR and the statement of the complainant, who appeared as PW-1, regarding the manner of the offence. He has further argued that as per the FSL report regarding the weapon used it has been opined that no definite opinion could be formed regarding the linkage of country-made pistol marked as W/1 due to lack of sufficient comparable individual characteristic marks. It is further submitted that in view of the above, considering the long custody of the petitioner, he may be granted the concession of regular bail as it will enable him to lead defence evidence more effectively.

Counsel for the State, on the basis of the Custody Certificate, has not disputed the factual position but opposed the prayer for bail. It is also not disputed that the petitioner is in custody for the last about 04 years, however, it is submitted that the petitioner is involved in 03 other cases of Section 42-A of the Prisons Act, which are regarding the conduct of a convict/undertrial during his stay in the prison and in one case, he has already been discharged and in one case, he has undergone the sentence.

Counsel for the State has also not disputed that the case before the trial Court, is now fixed for defence evidence and arguments and even on 03.03.2020, when the first bail application of the petitioner

CASE HEARD THROUGH VIDEO CONFERENCING

was dismissed, the case, before the trial Court, was fixed for defence evidence and arguments.

After hearing the counsel for the parties, without commenting anything on merits of the case and going through the zimini orders passed by the trial Court regarding the delay in disposal of the trial on account of non-production of the petitioner/accused person(s) from the jail, which is primarily due to COVID-19 as there were lot of restrictions on movement and the proceedings were undertaken through video conferencing only, the same cannot be attributed to the petitioner to delay the trial and considering the fact that the petitioner is in custody for the last more than 04 years; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time due to COVID-19 situation, 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

09.07.2021

yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No