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

CRM-M- 28342-2019

Date of Decision: 13.10.2021

Naresh

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Jitender Nara, Advocate for the petitioner.

Mr. Bhupender Singh, DAG, Haryana.

SUDIP AHLUWALIA, J. (ORAL)

The present petition has been filed under Section 439 of the Code of Criminal Procedure by the petitioner, seeking regular bail in case FIR No.272 dated 24.07.2017, under Sections 302/34 of the IPC and Section 25 of the Arms Act, registered at Police Station Beri, District Jhajjar.

2. Ld. Counsel for the petitioner has submitted that the petitioner has remained in prison for more than four years, since 08.08.2017. It has further been stressed that the role attributed to the petitioner in the FIR (Annexure P-1) was that of having caught hold of the complainant's brother Bijender, along with another co-accused namely Satish on the relevant date, after which, the third accused Ishwar had shot at the complainant's brother from his gun, which held to his death. The relevant extracts from the original FIR lodged by the complainant Jai Singh are reproduced below:-

“Today on 24.07.2017 at about 6:00 A.M. my brother Bijender was going from our house to the plot for taking milk and I was coming to the house from the

plot. We were at a distance of 20-30 steps from each other then suddenly Ishwar, Satish, Naresh sons of Subbe Singh came from the street of their plot and gave a Lalkara to my brother Bijender saying that today he will not be saved and while saying this, Satish and Naresh had caught hold my brother Bijender and Ishwar had shot at my sight upon my brother from his gun which he was holding in his hands. I raised loud voice saying Maar Diya Maar Diya and hearing this, my cousin Jitender son of Ramphal and my brother Samsher son of Bhola Ram came at the spot and when Satish, Ishwar and Naresh saw my brother coming there, fled away from the spot along with their weapons. They all three killed my brother by firing at him.”

3. In this backdrop, the specific submission raised on behalf of the petitioner, which was also noted in the earlier order passed on 16.08.2021, is that the role ascribed to the petitioner is exactly the same, which was attributed to co-accused Satish, i.e. of having caught hold of the deceased Bijender, after which the said deceased was fired at by co-accused Ishwar. But during investigation, Satish was found innocent by the Investigating Agency and, was therefore, not sent up for trial. Subsequently however, the complainant sought to summon the said Satish for trial by way of filing an application under Section 319 of the Cr.P.C., which was however, dismissed by the Ld. Trial Court/Additional Sessions Judge, Jhajjar on 29.04.2019, vide his order at Annexure P-3. As such, according to the petitioner's Ld. Counsel, he is liable to be treated at par with co-accused Satish, since the role ascribed to both of them in the FIR is identical and considering the long detention undergone by him, he is now entitled to be released on bail.

4. After going through the available material on record, this Court is not in agreement with the aforesaid submission raised on behalf of the petitioner. This is so because the act of having caught hold of the deceased/victim Bijender, when he was subjected to gun firing by co-accused Ishwar, would have the effect of making the petitioner equally liable for the offence of murder, even though he may not have directly fired at the victim. The fact that co-accused Satish was found innocent during the course of investigation is inconsequential because the material apparently collected against the petitioner is qualitatively different from that against Satish, as can be seen from the order dated 29.04.2019 (Annexure P-3) to the effect that even the disclosure statements of not only the present petitioner himself, but another accused namely Manish, had not mentioned anything about involvement of Satish as mentioned in the original FIR.

5. The evidence of the material witnesses from the prosecution side is still to be recorded. Consequently, considering the nature of material transpiring against the petitioner, essentially from the allegations in the FIR itself, and the fact that co-accused Ishwar is reported to be still an absconder, this Court is not inclined to release the petitioner on bail at this stage.

6. Dismissed.

13.10.2021

Apurva

(SUDIP AHLUWALIA)
JUDGE

1. Whether speaking/reasoned: Yes/No

2. Whether reportable: Yes/No