

**203 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
CRM-M-40972 OF 2021
DATE OF DECISION : 07.10.2021**

Rajesh @ Dalo

...Petitioner

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sachin Mittal, Advocate,
for the petitioner.

Mr. R. K. S. Brar, Addl. AG, Haryana.

(Presence marked through video conferencing).

ARUN MONGA, J. (ORAL)

1. This is second foray of petitioner before this Court seeking regular bail in FIR No. 727 dated 04.11.2017, registered under Sections 302, 365, 201 IPC, at Police Station Civil Lines, Gurugram.

2. Per prosecution, on 02.11.2017, brother of the complainant- Kuldeep Singh, namely Prem (since deceased), a driver by profession, had left home for driving to Gurugram-Sohna Chowk. However, he did not return until 04.11.2017. On enquiry, it transpired that deceased was last seen sitting at a tea stall at Sohana Chowk, Gurugram on 02.11.2017 at around 6.30 p.m. The tea vendor disclosed that at around 6.40 p.m. on that day three boys came in a car of Ecco make, which was without number plate. They forcibly took the deceased in their said car and went away. The complainant thus suspected the involvement of Karan Singh @ Habbu, Amit @ Dhollu and Rajesh @ Dalo (petitioner herein) in the abduction of his brother. The accused were arrested. In course of

investigation, the offence under Section 302 IPC was added since it came to knowledge that Prem was in fact dead. On the basis of disclosure statement, recovery of bones and ashes of the deceased was effected.

3. Learned counsel for the petitioner contends that petitioner has been falsely implicated in the case as there is no direct evidence against him. Neither there is any eye witness to the occurrence, nor test identification parade was conducted to prove the identity of the accused. It has not been proved from the ashes and bones (burnt), allegedly recovered on the joint disclosure statement of the accused that the same was, in any manner, connected with deceased Prem. He also seeks parity with the co-accused, namely, Amit @ Dhollu, who has been granted the concession of regular bail by this Court vide order dated 14.09.2021 passed in CRM-M-28887 of 2021 and submits that case of the petitioner is on better footing.

4. Learned counsel for the petitioner strenuously argues that out of 16 prosecution witnesses, 03 witnesses have been examined and the material prosecution witnesses, namely, PW-1 Constable Manoj Kumar, PW-2 Sahil (owner of the tea stall) and PW-5 complainant Kuldeep Singh, have not supported the prosecution case. The other witnesses are formal in nature. The petitioner is in custody since 02.02.2018 i.e almost 03 years and 08 months. The prime witnesses have not supported the prosecution version, therefore, no useful purpose would be served by keeping the petitioner in further preventive custody.

5. Learned State counsel opposes the bail petition and submits that there is every likelihood that the petitioner may abscond and influence the witnesses.

6. I have heard rival contentions of the respective learned counsels.

7. The argument of the learned State counsel that the petitioner is likely to influence the witnesses during the pendency of the trial, *prima facie* does not seem to be tenable in view of the fact that concededly statements of the material witnesses have already been recorded and they have not supported the prosecution version and rest of the witnesses are formal in nature.

8. Considering the overall scenario, coupled with prolonged detention already undergone and also the fact that alleged eye-witnesses has not supported the prosecution version nor any test identification parade has been conducted. Recording of the remaining witnesses will still take some time. The petitioner is stated to be in custody since 02.02.2018. Conclusion of trial will take some time as the Courts are currently functioning under certain restrictions caused by COVID-19 pandemic and till outcome thereof, to keep the petitioner in custody merely on the ground of apprehension, seems to be improper and unfair at this stage.

9. In the premise, without commenting on the merits of the case, the instant petition is allowed. Accordingly, petitioner is directed to be released on bail, on his furnishing bail bonds and surety bonds to the satisfaction of learned Sessions Court, where his case is being tried/ Duty Judge concerned.

OCTOBER 07, 2021

Shalini

Whether speaking/reasoned :

Whether reportable :

(ARUN MONGA)

JUDGE

Yes/No

Yes/No