

217.

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

CRM-M-37041 of 2020

Date of decision: 27.04.2021.

Manish

... Petitioner

versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. Jai Vir Yadav, Advocate,
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

AMOL RATTAN SINGH, J. (Oral)

Case heard via video conference.

By this petition, the petitioner seeks the concession of 'regular bail' under the provisions of Section 439 of the Cr.P.C., upon FIR no.340, dated 22.09.2016, having been registered at Police Station Sector-40, Gurugram, alleging therein the commission of offences punishable under Sections 302 of the IPC read with Section 34 thereof, as also Section 25/54/59 of the Arms Act, 1959, with Section 120-B of the IPC added later.

On 28.01.2021, the following order was passed by this Court, reproducing therein the order earlier passed on 08.01.2021.

“Case heard by video conferencing.

On January 08, 2021, the following order had been recorded by this court:-

“Case heard by video conferencing.

By this petition, the petitioner seeks the concession of 'regular bail' under the provisions of Section 439 of the Cr.P.C., upon FIR no.340, dated 22.09.2016, having been registered at Police Station Sector-40, Gurugram, alleging therein the commission of offences punishable under

Sections 302 of the IPC read with Section 34 thereof, as also Section 25/54/59 of the Arms Act, 1959, with Section 120-B of the IPC added later.

Pursuant to the order of this court dated 18.11.2020, a report (dated 02.12.2020) of the learned Addl. Sessions Judge, Gurugram, has been received, a perusal of which shows that actually no prosecution witness has been examined. (Though it has not been specifically stated to that effect by the Addl. Sessions Judge, that would seem to be what he wishes to communicate in the letter).

Mr. Yadav, learned counsel for the petitioner, reiterates that the petitioner was initially admitted to bail by the trial court itself but thereafter he having filed applications seeking exemption from personal appearance, eventually the 4th or 5th such application was rejected.

He submits that in fact the said set of the applications had been filed on account of the fact that the petitioner was wanted in another case in which he apprehended his arrest; and he was thereafter arrested in that case after which he filed an application seeking to be produced before the trial court in the case presently in question and he was so produced after about 5½ months of his last application seeking exemption having been dismissed.

Mr. Yadav submits that for those 5½ months absence the petitioner has now suffered another 2½ years since August 2018 and therefore he deserves to be admitted to bail. When this court was apprehensive of the petitioner being admitting to bail in view of the 17 criminal cases shown to be registered against him in the petition itself, Mr. Yadav submits that he would cite judgments to show that pendency of even a large number of such cases should not preclude this court from admitting the petitioner to bail in the entire circumstances as have been enumerated hereinabove.

On his request, adjourned to 21.01.2021.

He would give the list of those judgments to the Reader of this court as also to learned State counsel."

Today learned State counsel submits that as per his instructions one prosecution witness has been examined out of 57, with Mr. Yadav first pointing to the order of the learned Sessions Judge, Gurugram, dated 25.05.2017(copy Annexure P-2), wherein it has noticed that the eye-witness, PW-1, had turned hostile.

He next submits that the petitioner having actually been admitted to bail by the trial court itself on 08.08.2017, some of the applications moved by him subsequently, seeking exemption from personal appearance had been allowed, but the last such application was dismissed, after which proceedings under Section 82 of the Cr.P.C. were initiated, but it having been found that the petitioner had in fact been arrested in the context of another case, those proceedings were dropped and instead production warrants were ordered to be issued for him to be produced in court from jail.

He further submits that many other co-accused of the petitioner have already been enlarged on bail, as per the orders annexed with the petition itself.

As regards this court expressing its apprehension on admitting the petitioner to bail on account of the other cases registered against him,

Mr.Yadav submits that in 3 of those cases he was acquitted (as per the chart reproduced in paragraph 18 of the petition), whereas in most of the other cases he is on bail, except 2 cases.

He submits that, however, that fact should not come in the way of petitioner being admitted to bail in the context of present case in the aforesaid circumstances, wherein he was actually admitted to bail by the trial court itself within 8 months of his arrest and subsequently has been denied bail after he was arrested in another case and therefore he could not appear before the trial court.

He also relies upon two judgments of the Supreme Court in “**Maulana Mohd. Amir Rashdi vs. State of U.P. and another**” 2012 (1) RCR (Crl.) 586 and “**Prabhakar Tewari vs. State of UP and another**” (Crl.Appeal No.152 of 2020 decided alongwith Crl. Appeal No.153 of 2020, decided on 24.01.2020.

Considering all the aforesaid circumstances, including the fact that even the petitioner himself was admitted to bail, with him not having been named in the FIR and he having been implicated by way of a criminal conspiracy alleged to have been hatched by him (thereby attracting the offence punishable under Section 120-B of the IPC), with the eye-witness also stated to have turned hostile, without making any comment on the actual merits of the case, the petitioner is ordered to be admitted to interim bail at this stage, upon him furnishing adequate bail and surety bonds to the satisfaction of the trial court/CJM/Duty Magistrate concerned, till the next date of hearing before this court.

Adjourned to 26.04.2021.

The trial court is directed to send a report by that date as to the stage of the trial at that point of time.”

Learned State counsel vehemently opposes the petition on the ground that the petitioner having absconded after being granted bail by the trial Court and his last application seeking exemption from personal appearance having been dismissed, he yet did not appear before that court till he was arrested in June 2018, in the context of a different FIR registered against him.

However, he does not deny that the only eyewitness to the occurrence, i.e. one Sunil, turned hostile, with Mr. Yadav further submitting that the complainant being the father of the deceased, had stated that he was told by Sunil that his son has been killed by three unknown persons. He further submits that in fact the petitioner has been arraigned as an accused in the FIR only with the aid of Section 120-B of the IPC.

It is also noticed that the report of the learned trial Court (Additional Sessions Judge, Gurugram), dated 15.04.2021, has been received, giving therein the details of various accused having been arrested in the matter and produced before that court, with certain PWs not having appeared due to various reasons.

The trial is still stated to be underway.

Consequently, keeping the entire circumstances in view and especially the fact that the eyewitness is admitted to have turned hostile, without making any comment on the actual merits of the case, the order passed on 08.01.2021 is made absolute, with the present petition thereby allowed.

(AMOL RATTAN SINGH)
JUDGE

27.04.2021
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No