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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.42162 of 2020 (O&M)
Decided on: 30.09.2021

Ramesh @ Mesa

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Vinod Ghai, Sr. Advocate
with Mr. Edward Augustine George, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

Mr. Vineet Chaudhary, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this 3rd 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.55 dated 14.02.2017, for offence punishable under Sections 364, 365, 302, 201, 450, 511, 212 and 120-B of the Indian Penal Code, 1860 (in short 'IPC') and Section 25 of the Arms Act registered at Police Station Sadar Sonapat, District Sonapat.

The earlier one were dismissed as withdrawn vide order dated 07.12.2018 and dated 02.03.2020 passed in CRM-M No.33470 of 2018 and CRM-M No.2134 of 2020, respectively.

Learned senior counsel for the petitioner has relied upon the order dated 15.09.2020 passed in CRM-M No.21365 of 2020, vide which the co-accused Ram Karan was granted bail. The operative part

of the said order, reads as under:-

“Counsel for the petitioner has argued that the petitioner is in custody since 21.06.2017, a period of more than 03 years and 02 months has elapsed and the case is still at the stage of recording the prosecution evidence.

Counsel for the petitioner has further submitted that as per the allegations in the FIR, registered at the instance of one Vinita wife of deceased Sandeep, it is stated that 09-10 persons including the petitioner had enmity with her husband Sandeep as he was on the target of the accused persons, who are gangsters of the area. It is further stated in the FIR that one FIR under Section 307 IPC was registered on account of a murder attack on the life of her husband Sandeep. Even some time back, a gangster namely Vikash @ Dudhia was shot dead in police custody and on that account, her husband had told the complainant that Ram Karan and Vicky, etc. had committed the murder of one Vikash and Vedpal has lodged a false case. It is further stated in the FIR that her husband was having recording of telephonic conversation with the other accused and the same was provided by the husband of the complainant to the police after the murder of Vikash.

It is further stated in the FIR that one person namely Deepak @ Bhanja was arrested by Samalkha police and during interrogation, it came that he along with other had murdered one Deepak Dilli, Ashish Badwasni and Rahul Jaji. It is also stated in the FIR that the husband of the complainant told her that the petitioner Ram Karan and one Rajesh Sarkari, who was released on bail, are conspiring to kill him. On 11.02.2017, the husband of the petitioner left the home for visiting some place in a Hyundai car but he did not return back. With the said allegations, the FIR was registered that she has

doubt that her husband, who was a liquor businessman, has been murdered.

Reply by way of affidavit of the Investigating Officer has been filed in the Court, which is taken on record. As per the affidavit, the police constituted an SIT and it surfaced that Ramesh @ Mesha Pehlwan, Sushil @ Shila, Sunil @ Ullu, Amit @ Lamba, were arrested in FIR No.100 dated 26.02.2017 in Police Station Tilak Nagar, Delhi and they suffered a disclosure statement with regard to the offence, committed in the present FIR. They are also involved in FIR No.44 of 2017 registered in Police Station City Gohana. Later on, these persons joined the investigation and after their formal arrest, during police remand, the accused persons demarcated the place where they had the dead bodies of Sandeep Badwasni, Balbir Rukhi and Surender Rathee in Gang Canal near Murad Nagar, Uttar Pradesh. It is further stated in the affidavit that the dead bodies were identified during the investigation of FIR No.44 of 2017. Later on, Deepak, Anil @ Lila and Ashok @ Gollu were arrested in FIR No.44 of 2017 and they identified the place and weapons were also recovered.

It is further stated that when Rajesh @ Sarkari was arrested on 20.05.2017, in the said FIR he suffered a disclosure statement that when he and the petitioner were confined in District Jail, Sonapat, they became friend and used to meet each other and the petitioner – Ram Karan stated that he has a property dispute with Sandeep and they wanted to get Ram Kara killed. He further disclosed that Ram Karan told him to get Sandeep killed and in that process, the petitioner was nominated in the said FIR.

After giving the complete details of investigation in the said FIR, it is further stated that in the present case, an incriminating evidence has come against the present

petitioner, who played an active role in commission of offence and he was arrested and one country-made liquor and Fortuner car was recovered from him.

The affidavit further states that the petitioner is facing the trial in as many as 08 FIRs. The complete details of which are reproduced as under:-

i. FIR No.415 dated 17.10.2016 under Sections 323/506/34, registered in Police Station Sadar Sonapat, wherein he has already been acquitted on 03.05.2017.

ii. FIR No.123 dated 28.03.2012 under Sections 148/149/452/506 IPC, registered in Police Station Civil Line, Sonapat and in this case he has already been acquitted on 09.03.2015.

iii. FIR No.355 dated 05.05.2018 under Sections 42 of the Prisoners Act, registered in Police Station City Sonapat and in this case he has already been acquitted on 11.10.2019.

iv. FIR No.439 dated 16.07.2015 under Sections 148/149/307 IPC and Section 25 of Arms Act, registered in Police Station City Sonapat, which is still pending trial.

v. FIR No.44 dated 13.02.2017 under Sections 365, 302, 201, 120-B IPC and Section 25 of Arms Act, registered in Police Station City Gohana, Sonapat, which is still pending trial.

vi. FIR No.359 dated 05.05.2018 under Sections 42 of Prisoners Act, registered in Police Station City Sonapat, which is still pending trial.

vii. FIR No.76 dated 26.03.2018 under Sections 186, 332, 353, 506, 120-B, 34 IPC and Section 25 of Arms Act, registered in Police Station PGIMS, Rohtak, which is still pending trial.

viii. FIR No.442 dated 08.11.2018 under Sections 399, 402, 307, 332, 353, 420, 467, 468, 471 IPC and 25 of Arms Act, registered in Police Station Murthal, Sonapat, which is still pending trial.

Counsel for the petitioner has placed on record the order dated 18.07.2018 vide which he was granted regular bail in FIR NO.76, order dated 13.05.2019 vide which the petitioner was granted bail in FIR No.442 under Section 307 IPC, order dated 14.05.2019 vide which the petitioner was granted bail in FIR No.39 under Section 42-A of the Haryana Prisons Act, the judgment dated 09.05.2015 vide which the petitioner was acquitted in FIR No.123, judgment dated 16.02.2012 vide which the petitioner was acquitted in FIR No.167, judgment dated 21.10.2014 vide which the petitioner was acquitted in FIR No.196, judgment dated 27.05.2010 vide which the petitioner was acquitted in FIR No.166, the judgment dated 05.02.2019 vide which the petitioner and other accused, were acquitted in FIR No.139 registered under Section 302 IPC and the judgment dated 26.02.2015, vide which the petitioner was acquitted in FIR No.189.

Counsel for the petitioner has further relied upon the statements of three prosecution witnesses i.e. PW1 Aashu, who did not support the prosecution version, though, as per the FIR, he reached at the spot on hearing the fire-arm shots and was declared hostile and despite his cross-examination, he did not support the prosecution case. Similarly, PW2 Sandeep, an eye-witness was also declared hostile by the Public Prosecutor and did not support the prosecution case and similarly, PW3 and PW4 i.e. Sachin and Pawan, were also declared hostile by the Public Prosecutor as they did not support the prosecution case.

Counsel for the petitioner has also argued that despite the fact that the petitioner is in custody for the last more than 03 years, the complainant Vinita has not come forward to record her statement as she herself is an accused in two FIRs and in one FIR No.516 dated

12.12.2017, registered under Section 302 IPC in Police Station Rohtak, she has been declared a proclaimed offender and later on, she has been nominated as an accused in another FIR No.400 dated 17.09.2020 registered at Police Station Palam Vihar, Gurugram.

Counsel for the petitioner has also submitted that considering the fact that 04 of the prosecution witnesses, have not supported the prosecution version and in view of the fact that the complainant Vinita is avoiding her appearance before the trial Court to record her statement on account of the fact that she is a proclaimed offender, the petitioner be granted the concession of bail.

Counsel for the State, on the other hand, on the basis of the affidavit of the Investigating Officer and the Custody Certificate, has argued that during the investigation it has been found that the petitioner has played an important role in commission of the offence and an illegal pistol and car, which were used in commission of the offence, was recovered from the petitioner. It is also submitted that the petitioner was found involved in number of cases and that is why, he is not entitled for bail.”

For the sake of brevity, the facts are not reproduced again.

Learned senior counsel for the petitioner has further submitted that the allegations against the petitioner in this case are identical to that of the co-accused Ram Karan. It is further argued that the petitioner was also arrested in FIR No.100 dated 26.02.2017, registered in New Delhi and during the investigation of the said case, the disclosure statement of the petitioner was recorded regarding committing of the offence. Thereafter, the petitioner was arrested in the FIR No.44 on the basis of the production warrants on 04.03.2017 and simultaneously, he was also shown arrested in the present FIR No.55

and the police thereafter, recorded his statement, as well.

Learned senior counsel for the petitioner has also submitted that the petitioner is in custody for the last 04 years and 06 months and till date, the case is still at the stage of recording of the prosecution evidence and there are total 56 PWs cited in the list of witnesses.

Learned senior counsel for the petitioner has referred to the statement of PW-1 Ashu, PW-2 Sandeep, PW-3 Sachin, PW-5 Sunita, PW-6 Sandeep and PW-7 Sachin, who did not support the prosecution version and were declared hostile.

Learned senior counsel for the petitioner has lastly, submitted that even in FIR No.100 registered at New Delhi, the petitioner stands acquitted and in one FIR No.402 where he was shown to be convicted for a period of 10 years, the petitioner stands acquitted by this Court vide judgment dated 04.11.2019 passed in CRA-S-No.1497-SB of 2018.

Counsel for the State on the basis of the Custody Certificate, could not dispute the factual position.

Counsel for the State on the basis of the affidavit of the Deputy Superintendent of Police, Sonapat, has further submitted that the petitioner was part of the conspiracy, which was hatched for commission of the offence and the petitioner along with the co-accused has gone to throw the dead bodies of the deceased in Gang Canal in Uttar Pradesh, however, it is not disputed that 06 PWs have not supported the prosecution version and in majority of the cases, which are referred to in Para 12 of this affidavit, the petitioner either stands

acquitted or has undergone the sentence.

After hearing the learned counsel for the parties, considering the fact that the petitioner is in long custody of 04 years and 06 months; the case is still at the stage of recording the prosecution evidence; 06 PWs have not supported the prosecution version and also in view of the fact that the petitioner stands acquitted in other FIRs and conclusion of the trial is likely to take some time, 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

30.09.2021
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No