

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

211

CRM-M-3598-2022

Date of Decision : 02.02.2022

MEHBOOB

.....Petitioner

Versus

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present : Mr. C.L.Verma, Advocate
for the petitioner.

Mr. Karan Sharma, DAG, Haryana
for the respondent-State.

SANT PARKASH, J. (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present (first) petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.83 dated 09.02.2020 registered under Section 302 of the Indian Penal Code, 1860 at Police Station Sadar Ballabhgarh, District Faridabad to which Section 25 of the Arms Act, 1959 was added later on.

The present FIR was lodged on statement of Reshma who alleged that on 04.02.2020, her husband namely Sanjay had gone for labour work in the morning but he did not return. While searching, she reached Trauma Centre of AIIMS, New Delhi on 07.02.2020 where she identified dead body of her husband. On enquiry, she found that her husband was murdered by the present petitioner-Mehboob and had sought action against him.

The petition has been opposed by learned State Counsel.

However, no reply has been filed by respondent-State.

I have heard learned Counsel for the petitioner and learned State Counsel and gone through the record.

Making out a case for grant of regular bail, learned Counsel for the petitioner would contend that the learned District Judge, while dismissing the bail application vide impugned order dated 22.12.2021, totally overlooked the fact that the material witnesses i.e. PW-4 Reshma-wife and PW-1 Meena-mother of the deceased have turned hostile and did not utter even a single word against the petitioner. He would further submit that the recovery of the country made pistol allegedly from the possession of the present petitioner is a planted one because as per the cross examination of PW-2- Dr.Sachin Garg, Medical Officer, Govt. Hospital Ballabgarh, Faridabad, he did not find any bullet injury. According to him, when there was no bullet injury, the question of recovery of pistol from the possession of the present petitioner does not arise at all and the total case of the prosecution would fall like a pack of cards.

Further elaborating his arguments, learned Counsel would argue that it would be seen at the time of conclusion of the trial as to whether the petitioner can be convicted solely on the FSL Report on the basis of which the bail application of the petitioner has been declined by learned District Judge. The petitioner is in custody since 10.02.2020 and since the material witnesses have already been examined, there is no need for further detention of the petitioner. Accordingly, the petitioner may be granted concession of regular bail.

Opposing the contentions tooth and nail, learned State

Counsel has urged that the petitioner is involved in heinous crime of murder and the learned District Judge had rightly dismissed the bail application. Further, he has not disputed the period of custody undergone by the petitioner.

After having heard learned Counsel for the parties and going through the material placed on record, I am of the considered opinion that despite the fact that two material witnesses PW1 and PW4 have not supported the prosecution version, the petitioner is not entitled to relief for grant of regular bail.

Learned Counsel for the petitioner has tried to mislead the Court by referring to the cross examination of PW-2 and if examination -in-chief of that witness is gone through it would reveal that the doctor has deposed that during the course of post-mortem, one bullet was removed from the head of the deceased and after perusal of the PMR he had opined that the cause of death was due to gun shot injury and his opinion was Exhibit PA/3. It clearly indicates that the gun shot injury was the cause of the death.

It has further come on the record and also from the copy of the impugned order (Annexure P-2) that the petitioner was arrested on 10.02.2020 and he got recovered one country made pistol of .315 bore in pursuant of the disclosure statement. The bullet extracted from the dead body was sent to FSL along with pistol in question and as per the report of the FSL the bullet recovered from the dead body was fired from the same pistol which was got recovered by the present petitioner.

Learned District Judge has rightly observed that it would be considered at the time of conclusion of trial as to whether the pistol

has been falsely planted or not.

With regard to the witnesses turning hostile, it is a common trend that the witnesses generally do not support the prosecution version on account of various reasons or extraneous considerations. The scientific evidence in the form of report of FSL is already on the file.

In view of the above, the present petition for grant of regular bail to the petitioner is dismissed.

The observations made by this Court are strictly for the purpose of disposal of the present petition and nothing in this order shall be treated as expression of any opinion on merits of the case so as to bind or influence the trial Court in adjudication of question of guilt or innocence of the petitioner.

02.02.2022
kavneet singh

(SANT PARKASH)
JUDGE

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