

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH
(208)**

**CRM-M-9292-2021
Date of decision:- 24.02.2022**

Kapil

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Atul Lakhanpal, Senior Advocate with
Mr. Arjun Lakhanpal, Advocate for the petitioner.

Ms. Mahima Yashpal, DAG, Haryana.

...

SUVIR SEHGAL, J. (ORAL)

Heard through video conferencing.

This is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of regular bail in case FIR No. 40 dated 09.02.2020 registered for offences under Sections 302, 307, 34 and 120-B of the Indian Penal Code, 1860 and Section 25 of Arms Act, 1959 (Section 120-B, IPC was added later on), at Police Station Civil Lines, Hisar, District Hisar, Annexure P-1.

First petition, CRM-M-32803-2020, preferred by the petitioner was withdrawn, after arguments, "at this stage" on 16.12.2020.

As per the case of the prosecution, FIR, Annexure P-1, has been registered on the complaint of Tej Pal on the allegation that his brother, Suraj Bhan, who was playing cards with a friend, Kuldeep Soni, was shot at by Ashok @ Shoki, Yash and an unknown boy, who fled on their motorcycle. Complainant took the injured to a hospital where Suraj Bhan was declared brought dead. Petitioner was arrested on 06.03.2020.

Learned senior counsel submits that a supplementary statement was recorded by injured, Kuldeep Soni and Nisha (wife of deceased) on 01.03.2020, wherein they named, Ashok @ Shoki, Sunny and Surjit, as the assailants. He submits that accused, Surjit, was arrested, who named, Vikas, who in turn named the present petitioner. He submits that besides the confessional statement of the co-accused and the petitioner recorded in police custody, which are inadmissible in evidence, the prosecution does not possess any incriminating material against the petitioner. He submits that the alleged recovery effected from the petitioner does not connect him with the alleged crime. He submits that the challan has been presented, but charge has not been framed and the petitioner, who is languishing behind bars for the last almost two years, deserves to be enlarged on bail.

Per contra, learned State counsel, upon instructions from ASI, Ravinder Kumar and by referring to the status report filed by way an affidavits dated 27.11.2021 and 21.02.2022 of the Deputy Superintendent of Police, Detective, Hisar has opposed the petition. She submits that the petitioner, who has a criminal past, is the brain behind the conspiracy, which was hatched by him in collusion with Ashok @ Shoki, and the petitioner is alleged to have conducted a *recce* and provided vital information regarding the presence of the deceased. As per her instructions, three mobile phones, vehicle used in *recce* and twelve sim cards have been recovered from the petitioner. She has made a detailed reference to the second status report to explain the reason for the delay in the framing of the charge.

I have heard counsel for the parties.

This Court is of the view that the material collected by the prosecution would remain debatable and the petitioner, who is suffering incarceration for the last more than one year and eleven months, would be entitled to be released on bail as the trial is yet to start and will take time to conclude.

Without delving into the merits or demerits of the arguments addressed by the counsel for the parties, petition is allowed. Petitioner is ordered to be released on bail on his furnishing adequate bail/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate concerned.

Considering the fact that the petitioner is involved in some other criminal cases, which are pending, he will furnish an affidavit to the effect that henceforth he will desist from any criminal activity and in case he violates the undertaking, liberty is granted to the State to seek cancellation of the bail.

It is clarified that any observation made hereinabove shall not be construed to be a reflection of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

24.02.2022
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No