

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-12135-2022 (O & M)****Date of decision: 18.05.2022**

Jony Hans

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Amitabh Tewari, Advocate, for the petitioner.

Mr. Vikrant Pamboo, DAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in a case FIR No.899 dated 15.09.2017 (Annexure P-1) under Sections 148, 149, 302, 109, 120-B IPC and Section 25 of the Arms Act, 1959 registered with Police Station Sadar, Gurugram.

2. The brief facts of the case are that the present FIR came to be registered at the instance of Anju Dagar wife of Gyan Singh Dagar with the allegations that one Joginder Singh resided in a house in front of the house of her son Anil. A few years ago, her younger son Amit developed enmity with Joginder Singh's son Jony (the present petitioner). In March, 2017, some unknown persons fired shots on Jony's mother, namely, Sudesh wife of Joginder and in that case, the names of her younger son Amit Dagar and elder son Anil Dagar were got recorded as accused at the instance of Joginder Singh and his son Jony. Because of this grudge, on 15.09.2017 at about 11.45 AM when Anil's wife, namely, Savita had left the house for

cycle alongwith two young boys and on another motor cycle came Joginder and another boy. Immediately, on seeing Savita, Joginder asked his son Jony and those two unknown boys to eliminate the deceased-Savita, on which, Jony took out a pistol from the pocket of his pant and fired shots on her daughter-in-law/Savita. After the occurrence, they all ran away from the spot. The complainant-Anju Dagar suspected that Darshan, Roopa and Manoj Binder Gurjar's brother alongwith the petitioner had got murdered her daughter-in-law/Savita. Based on the said complaint, the aforementioned FIR came to be registered.

3. The learned counsel for the petitioner submits that Satish (PW-14) and Tara Chand (PW-15), purported eye-witnesses of the occurrence have not supported the case of the prosecution. Their depositions are attached as Annexures P-2 and P-3. He further contends that the complainant-Anju Dagar (PW-16), wife of Gyan Singh, the mother-in-law of the deceased-Savita has also not supported the case of the prosecution as is borne out from Annexure P-4. Similarly, PW-17-Gyan Singh, husband of the complainant and father-in-law of the deceased has also not supported the case of the prosecution as per Annexure P-5. He, thus, contends that all the material witnesses have been examined and have not supported the case of the prosecution.

4. The learned counsel for the petitioner further contends that as per the report of the FSL, the country-made pistol allegedly recovered from the petitioner has not been conclusively matched with the fired cartridges cases/fired bullets recovered from the place of the occurrence/body of the deceased and, thus, there is no link between the recovery from the petitioner and the commission of the offence. He also contends that the petitioner is

witnesses have been examined so far. Therefore, the trial is not likely to be concluded in the near future, and as such, the petitioner is entitled to the concession of regular bail.

5. The learned State counsel has filed a reply dated 16.05.2022 in the Court today. The same is taken on record. As per the said reply, the sequence how the investigation proceeded has been enumerated. Reference has been made to the recovery of a pistol from the petitioner and the FSL report (Annexure R-1). The criminal antecedents of the petitioner have been set out in the Annexure R-2, and thus, it is contended that keeping in view the seriousness of the offence, the recovery of the weapon from the petitioner as also his criminal antecedents, he does not deserve the concession of bail.

6. I have heard the learned counsel for both the parties.

7. The four main prosecution/eye-witnesses have not supported the case of the prosecution by not identifying the petitioner as assailants. This fact has not been denied by the learned counsel for the State.

8. Admittedly, in the present case, the complainant and the eye-witnesses have not supported the case of the prosecution, and thus, they have been declared hostile. The Hon'ble Suprem Court in "***Dr. Gokarakonda Naga Saibaba versus State of Maharashtra, 2016(2) RCR (Criminal) 675***" and this Court in "***Devender @ Devender Chhabra @ Tintu versus State of Punjab, CRM-M-27957-2015 decided on 22.08.2016*** and "***Monu versus State of Haryana, CRM-M-11923-2022 decided on 07.04.2022***" has held that grant of bail can be considered where witnesses stand examined.

9. With respect to the criminal antecedents of the petitioner, it may be pointed out that as per the detail set-out in Annexure R-2, only two FIRs remain pending against the petitioner. FIR No.899 dated 15.09.2017 is the

present FIR in which, the petitioner is seeking concession of regular bail and in the other FIR i.e. FIR No.208/2018 dated 20.03.2018 under Sections 120-B, 307, 34 IPC, Sections 25/54/59 of the Arms Act registered at Police Station Sadar Gurgaon (Gurugram), the trial is pending and it is fixed for recording of prosecution evidence. The Hon’ble Supreme Court in “*Maulana Mohd. Amir Rashadi versus State of U.P. and another, 2012(1) R.C.R.(Criminal) 586*”, and this Court in “*Rajender Singh versus State of Haryana*”, CRM-40431-2021 in CRA-D-1640-DB-2014”, has held that criminal antecedents alone are not sufficient to deny bail to an accused and the evidence available in each case ought to be seen as well.

10. The petitioner is in custody since 23.04.2018 and all the material witnesses have been examined. Out of a list of 53 prosecution witnesses only 20 have been examined so far and, as such, the trial is not likely to be concluded in the near future

11. In view of the above, the further incarceration of the petitioner is not required. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Jony Hans, is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

The petitioner shall appear before the local police station on the first Monday of every month till the conclusion of the trial and shall furnish an affidavit each time that he is not involved in any other crime/case other than the two cases mentioned hereinabove during the time he was on bail.

(JASJIT SINGH BEDI)
JUDGE

May 18, 2022

sukhpreet

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No