

S.No.220

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

CRM-M-11436-2022 (O&M)

Date of Decision:02.05.2022

Chand Ram

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Sandeep Gahlawat, Advocate
for the petitioner.

Mr. Anmol Malik, DAG, Haryana.

VIKAS BAHL, J. (Oral)

This is the first petition filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in case FIR No.202 dated 19.08.2021 registered under Sections 120-B, 148, 149, 302, 452, 506 IPC (during investigation Section 452 IPC replaced by Section 449 IPC added later on) at Police Station Pillu Khera, District Jind.

Learned counsel for the petitioner has submitted that in the present case, the alleged occurrence took place on 17.08.2021/18.08.2021 and the wife of the deceased Kanta, on 18.08.2021, had given a statement that her husband, who had been injured on the intervening night would get the statement recorded in this regard. On 18.08.2021, the husband of the complainant died and on 19.08.2021, an FIR was registered, in which 11 persons were named but the name of the petitioner was not mentioned in the FIR. It is further submitted that no injury has been attributed to the petitioner and in fact, the petitioner has not even gone into the house of the deceased on the intervening night of 17.08.2021/18.08.2021. It is

further submitted that the petitioner was sought to be roped after a delay of seven days from the registration of the FIR on the basis of the disclosure statement of the main accused Vikas and even as per the said disclosure statement, there was no allegation that the petitioner inflicted injuries upon the deceased but the only allegation was that the said Vikas on the asking of his mother, discussed the issue with the present petitioner and made a plan to finish Kamal. It is submitted that even in the disclosure statement of the petitioner which was recorded on 27.08.2021, the only addition that has been made is that the petitioner also had a dispute with the deceased Kamal and Pawan and there was a quarrel which took place on 17.08.2021 during the earlier part of the day, wherein the petitioner had also participated, but, however, in the alleged incident which had taken place on 17.08.2021 during the evening, when the alleged fatal injuries were caused to the injured, the petitioner has not been attributed either any injury nor it has been alleged that the petitioner has gone to the house of the deceased. Learned counsel for the petitioner also submitted that the petitioner has been in custody since 27.08.2021 and there are 26 witnesses, none of whom have been examined, thus, the trial is likely to take time. It is further submitted that even after recording of the disclosure statement, no recovery has been effected from the petitioner and the petitioner is not involved in any other case.

Learned State Counsel has opposed the present petition for regular bail and has submitted that a perusal of the disclosure statement of the co-accused person as well as that of the petitioner would show that the petitioner is also a part of the conspiracy to kill the deceased. Learned

State Counsel has further submitted that as per the disclosure statement of the petitioner on 17.08.2021, there was a dispute between the petitioner and the deceased Kamal and Pawan. The other factual assertions as stated by learned counsel for the petitioner, however, have not been disputed.

This Court has heard learned counsel for the parties and perused the paperbook.

The alleged incident had taken place on 17.08.2021/18.08.2021, when fatal injuries were inflicted upon the deceased. On 18.08.2021, the wife of the deceased, who was suffering from several injuries, at that point of time, had stated that it would be her husband who will give the statement. After the said statement of the wife was recorded, the husband of the complainant died and on 19.08.2021, the complainant got the FIR registered. A perusal of the FIR would show that 11 persons have been named in the said FIR and specific allegations have been made against the main person who had inflicted injuries upon the deceased. It is submitted that the petitioner has not been named in the said FIR nor any overt act has been attributed to the petitioner. The petitioner has been made an accused after seven days from the registration of the FIR on the basis of the disclosure statement of the main accused Vikash alias Machhar. Even as per the said disclosure statement recorded on 26.08.2021, the only allegation against the petitioner is that the plan to finish Kamal was discussed with the present petitioner. No overt act has been attributed to the petitioner even as per the said disclosure statement. Even from a perusal of the alleged disclosure statement suffered by the petitioner on 27.08.2021, it is clear that in the incident that took place on

the intervening night of 17.08.2021/18.08.2021, the petitioner had not gone to the house of the complainant/ deceased and had not inflicted any injuries during the alleged incident occurring on 17.08.2021, rather, the petitioner was present in an incident that broke out during the earlier part of the day. The said disclosure statement is the highest case against the petitioner. Even after recording of the said disclosure statement, no recovery has been effected from the petitioner. There is no other linking evidence other than the disclosure statement of the co-accused and that of the present petitioner. At any rate, the said aspect as to whether the petitioner is involved in the present case and had conspired with the other persons or not, would be a matter of debate, which would be adjudicated during the course of trial. The petitioner is stated to not be involved in any other case and has been in custody since 27.08.2021 and there are 26 witnesses, none of whom have been examined, thus, the trial is likely to take time.

Keeping in view the above-said facts and circumstances moreso, the fact that the petitioner has been in custody since 27.08.2021 and there are 26 witnesses, none of whom have been examined yet, and also the fact that no recovery has been effected from the petitioner in the present case, the present petition for grant of regular bail is allowed subject to the petitioner furnishing personal and surety bonds of a local surety before the Trial Court/Chief Judicial Magistrate/Duty Magistrate concerned and also subject to his not tampering with prosecution evidence and also not influencing prosecution witnesses and also subject to the petitioner appearing before the Trial Court on each and every date except on the date when their personal appearance is exempted and also subject to his not

being required in any other case.

It is made clear that in case the petitioner violates the abovesaid conditions or indulges in any criminal activity again, then it would be open to the State to move an application for cancellation of the present bail order.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

May 02, 2022

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(VIKAS BAHL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No