

CRM-M-14612-2022

Date of Decision: 01.06.2022

Pawan

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Ankur Lal, Advocate, for the petitioner.

Mr. Aman Bahri, Addl. A.G., Haryana.

AMOL RATTAN SINGH, J. (ORAL)

This petition has been filed under the provisions of Section 439 of the Cr.P.C., for grant of 'regular bail' to the petitioner in the context of FIR No. 183, dated 13.04.2020, registered at Police Station Bawal, District Rewari, for the alleged commission of offences punishable under the provisions of Sections 302/201/202/34 of the IPC.

Yesterday, i.e. 31.05.2022, the following order had been passed by this court:-

“Though at the time when Mr. Ankur Lal, counsel for the petitioner was present, it had been recorded by this court that his case being similar to his co-accused Nitesh Kumar, who had been admitted to bail on 21.01.2021, he having filed CRM-M-25788-2021, thereafter learned State counsel brought to notice of this court that as per paragraph 5 of the affidavit of the Deputy Superintendent of Police, Bawal, District Rewari, dated 13.05.2022, it has now come to notice that in fact though the petitioner and his co-accused Nitesh Kumar were arraigned as accused in the report under the provisions of Section 173 (2) of the Cr.P.C., only for the

commission of an offence punishable under the provisions of Section 202 of the IPC, however the trial court has charged them with offences punishable under the provisions of Sections 144/148/302/149 of the IPC.

Consequently, the order obviously having been only dictated a few minutes ago in court after which counsel for the petitioner has left, it has not even been typed out far less signed, the said order as dictated, is recalled and the matter is ordered to be put up for hearing on 01.06.2022.

It is to be observed by this court that in my opinion even the bar contained under the provisions of Section 362 of the Cr.P.C. would not apply in such a case where the order dictated immediately a few minutes before was not even typed out, far less having been signed.”

Today, learned counsel for the petitioner points out that even in the case of Nitesh Kumar, this court had admitted him to bail vide the order dated 29.01.2021, passed in CRM-M-25788-2021, while holding that though he too had been charged for the commission of an offence punishable under the provisions of Section 302 of the IPC read with Section 34 thereof, the stand taken by the State itself (in the report under the provisions of Section 173 of the Cr.P.C.), being that he was only guilty of an offence punishable under the provisions of Section 202 of the IPC (as per the investigating agency), therefore he should be admitted to bail. He submits that the petitioner is identically placed.

He further submits that in fact at least two material witnesses, i.e. the mother of the deceased and the wife of the deceased, have not supported the case of the prosecution and have turned hostile, with the mother being the complainant in the FIR.

Learned counsel for the State, on the other hand points out that in a similar petition filed by the petitioner before the trial court, it has been specifically observed that the brother of the deceased is still to be examined and therefore the petitioner does not deserve to be admitted to bail, he having been charged with an offence punishable under the provisions of Section 302 of the IPC.

He further submits that the petitioner having been found on duty at the petrol pump from where the deceased had been kidnapped, he should not be treated on par with the aforesaid Nitesh Kumar, though upon query as to whether Nitesh Kumar was also found to be similarly on duty, he submits that he has no instructions in that regard.

Learned counsel for the petitioner however points out that the allegation against the petitioner is identical to that against Nitesh Kumar even upon a bare reading of the FIR.

That is found to be so and therefore, without making any comment on the actual merits of the case, which would be gone into by the trial court on the basis of evidence led before it, the petition is allowed. The petitioner shall be admitted to bail upon his furnishing adequate bail bonds and surety bonds to the satisfaction of the learned trial court/Duty Magistrate/Chief Judicial Magistrate.

June 01, 2022
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No.