

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

205

**CRM-M-20666-2021
Date of decision: 02.05.2022**

FIROZ KHAN

....Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Afzal Hussain, Advocate
for the petitioner.

Mr. Ashish Yadav, Additional A.G. Haryana.

VINOD S. BHARDWAJ. J. (ORAL)

The instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 by the petitioner for seeking concession of regular bail in case bearing FIR 560 dated 14.09.2018, under Sections 302 and 34 IPC and Sections 25/54/59 of the Arms Act, registered at Police Station Shivaji Colony, District Rohtak.

2. Learned counsel appearing on behalf of the petitioner submits that the FIR had been registered on the Statement of Israil. A perusal of the FIR shows that the eldest daughter of the petitioner was married to the petitioner Firoz Khan and that he had received a telephone call from Mehboob his brother-in-law informing him that his daughter Rubina who was residing in rented accommodation at Anand Nagar, near Jhajjar Chungi has been murdered by her husband Feroz khan and another boy who was riding on a Motor Cycle. On the basis of the said information, the present FIR was registered. The other person who accompanied the petitioner was identified as Dilshad. He submits that the said co-accused Dilshad had already been granted concession

of regular bail by this Court vide order dated 19.02.2021 passed in CRM-M-7076-2021. It is further contended that petitioner has been in custody since 17.09.2018 and has already undergone an actual custody of more than 03 years and 07 months. He points out that the case of the prosecution is based on the eye-witness account of one Kiran Mehta who had initially not appeared before the trial Court. However, during the course of proceedings held on 15.03.2022, the said prosecution witness Kiran Mehta has already been given up. He further contends that the petitioner does not have criminal antecedents and is not involved in any other case. Besides, the trial is going at a very slow pace and that only 12 witnesses out of 23 witnesses have been examined so far.

3. Mr. Ashish Yadav, Additional A.G. Haryana submits that the the petitioner is the main accused in the offence of murder of his wife Rubina. A country made pistol .315 bore was recovered from the petitioner and that the said weapon had been used in the commission of offence. He further submits that the prosecution witness-eye-witness Kiran Mehta was given up by the Public Prosecutor. He thus submits that in the event of the concession of bail being extended to him there is likelihood of him influencing the prosecution witnesses. Learned State counsel however could not deny the fact that all other remaining witnesses are official witnesses. It is also not disputed that that co-accused had been granted concession of regular bail after undergoing an actual imprisonment of 02 years and 11 months. The custody of the petitioner is merely 03 years and 07 months and that only 12 witnesses out of 23 witnesses have been examined so far. No satisfactory

explanation has been put forth for the inordinate delay in the trial. The culpability of the offence is to be determined by the trial Court on the basis of conclusion of the evidence. The power to deal with an application of bail cannot be used as a weapon to inflict sentence.

4. I have heard learned counsel appearing on behalf of the respective parties and have gone through the record with their assistance.

5. Taking into consideration, the actual period of custody already undergone by the the petitioner, his clean antecedents and also the present stage of the trial as well as the fact that the concession of bail has already been granted to co-accused Dilshad, I deem it appropriate to enlarge the petitioner on bail to the satisfaction of the trial Court.

6. The instant petition is allowed and the petitioner is ordered to be released on bail on his furnishing requisite bail bond/surety bond to the satisfaction of the Trial Court/Duty Magistrate, concerned.

7. It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

8. The observation made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of available material.

The petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

MAY 02, 2022
vishal sharma

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