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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No.31487 of 2022 in/and
CRM-M No.25451 of 2021
Date of Decision: 20.09.2022

DILBAG @ BHAGI

.....Petitioner

Vs
STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Deepak Chaudhary, Advocate
for the petitioner.

Mr. Minderjeet Yadav, D.A.G., Haryana.

RAJ MOHAN SINGH, J.(Oral)

CRM No.31487 of 2022

For the reasons mentioned in the application, the same is allowed. Accompanying documents are taken on record, subject to all just exceptions.

CRM-M No.25451 of 2021

Petitioner seeks grant of regular bail under Section 439 Cr.P.C. in his 3rd attempt in case bearing FIR No.464 dated 18.10.2017 registered under Sections 302/307/120-B & 34 IPC and Section 25 of the Arms Act at Police Station City Kaithal, District Kaithal.

Earlier CRM-M No.25751 of 2019 was disposed of vide order dated 16.01.2020 thereby ordering that the trial Court shall make every sincere endeavour to conclude the trial within a period of six months from the date already fixed it. It was also observed that since the official witnesses were to be examined by the prosecution, therefore, all the prosecution witnesses were required to be examined within six months from the date already fixed before the trial Court and thereafter the trial Court was expected to conclude the trial within a further period of 03 months.

The FIR was registered on behalf of Salinder son of Jogi Ram in respect of murder of his brother whose marriage was solemnized with Pooja. Pooja was sister of the petitioner. The marriage was solemnized about three years ago from the date of registration of the FIR. The family members of Pooja were not happy with the said love marriage. Pooja was blessed with a son aged 2½ years. Pooja used to speak with her mother only as she was not on speaking terms with other family members. On 18.10.2017, at about 10.00 A.M., Balinder asked for motorcycle from the complainant as he wanted to go to Kaithal to meet Pooja's mother, aunt and brothers. The complainant gave his motorcycle and Balinder went to Kaithal along with his wife and son. The complainant became suspicious as regards that conduct of the accused party,

therefore, the complainant along with his uncle Kitab Singh went to Kaithal on separate motorcycle of his uncle. They sat in Jawahar Park on one side out of the site of Pooja's aunt, mother and brothers. Complainant saw that at about 3.00 P.M., Sunil and the petitioner started manhandling Balinder. Complainant and his uncle went towards Balinder and in the meanwhile Sunil and the petitioner fired upon Balinder from their pistols. Balinder fell down. Sunil and the petitioner fled away from the spot along with their weapons.

Learned counsel for the petitioner submits that the second bail application i.e. CRM-M No.32375 of 2020 was dismissed on merits on 22.12.2020. Pooja has not supported the case of the prosecution while appearing as PW-2. She has exonerated the petitioner from all the charges.

Learned counsel further refers to the statement of alleged eyewitness i.e. PW-3, wherein he has already admitted in his cross-examination that he was present at his house and PW-1 Salinder came to his house when the deceased was murdered and thereafter both had gone to the house of Sarpanch Krishan Punia and Master Zile Singh and thereafter they came to the hospital.

Learned counsel further submits that as per custody certificate, petitioner has already undergone 04 years 10

months and 25 days of incarceration as on 19.09.2022. FIR No.45 dated 02.02.2021 was registered for the jail offences under Section 42-A of the Prisons Act in which petitioner is on bail. FIR No.183 dated 30.03.2018 was registered during currency of his custody in the jail under Sections 186, 332, 353, 506 IPC at P.S. City Kaithal, Kaithal and the petitioner was granted bail on 14.09.2018. In FIR No.466 dated 18.10.2017 under Sections 392 IPC and Sections 25/54/59 of the Arms Act at Police Station City Kaithal, Kaithal, the petitioner has already been acquitted on 01.06.2018. Out of 41 prosecution witnesses, only 28 witnesses have been examined so far and the trial of the case in all probability may take some time.

Per contra, learned State counsel with reference to the FSL report, post mortem report and different parcels containing weapons and cartridges submits that the examination of entire material would show that lead slug marked as BC/1 was fired from the country made pistol. Mark W/1 recovered from the petitioner was not fired from any other firearm of the same make because every firearm has its own individual characteristic mark.

The FSL report would be subject to judicial scrutiny by the trial Court on the basis of entire material.

Having heard learned counsel for the parties on *prima*

facie note, keeping in view the custody period already undergone by the petitioner and the stage of trial, I deem it appropriate to enlarge the petitioner on regular bail, without meaning anything on the merits of the case.

In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

September 20, 2022
Atik

(RAJ MOHAN SINGH)
JUDGE

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