

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

**CRM-M-23102-2022 (O & M)
Date of decision: 31.05.2022**

Sanjay Petitioner

V/s

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ashish Verma, 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 under Sections 302, 148, 149 IPC (Section 120-B IPC added later on) 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. 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 taking her children from the school, then, in the street, Jony came on a motor 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. As per the prosecution case, the petitioner-Sanjay was sitting on a motor cycle with the main accused-Jony.

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. 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. 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. 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 submits that Naveen and Jony have been granted the concession of regular bail by this Court vide order dated 28.10.2020 (Annexure P-2) and 18.05.2022

since 13.10.2019 and only 20 out of a total of 53 prosecution 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, on the other hand, contends that the petitioner-Sanjay was sitting on the motor cycle with the main accused-Jony. He further contends that two more FIRs i.e. FIR No.944 dated 14.10.2014 and FIR No.1227 dated 19.12.2018 have been registered against the petitioner and keeping in view the seriousness of the offence and criminal antecedents of the petitioner, he does not deserve the concession of bail. However, he admits the fact that 2 co-accused of the petitioner have been granted the concession of regular bail by this Court.

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 in Court. 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. The co-accused of the petitioner, namely, Naveen and Jony have been granted the

and the case of the petitioner is that he was sitting on a motor cycle, which the main accused was riding along side, who shot at the deceased. There are two other FIRs said to have been registered against the petitioner bearing No.944 dated 14.10.2014 under Sections 323, 325, 506 and 34 IPC with Police Station Sadar Hisar, in which he stands acquitted and FIR No.1227 dated 19.12.2018 under Section 174-A IPC with Police Station Sadar Hisar, which has been registered as the petitioner was declared P.O. in the FIR No.944 dated 14.10.2014.

9. 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 13.10.2019 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, Sanjay, 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 31, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No