

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(239)

CRM-M-26212-2021

Date of Decision: 28.01.2022

Sanjay

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Ajit Sihag, Advocate for the petitioner.

Mr. Vishal Kashyap, D.A.G., Haryana.

RAJESH BHARDWAJ.J (Oral)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

This is the second petition filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.0480 dated 19.9.2019 under sections 307, 354-A and 34 I.P.C (Sections 302, 450 I.P.C were added later on) registered at Police Station, Barwala, District Hisar.

As per factual matrix, the present FIR was registered on the basis of the dying declaration of deceased Suman recorded by learned JMIC, Hisar. Deceased Suman wife of Bajrang aged about 23 years had deposed that the petitioner Sanjay and his mother set her on fire after putting kerosene oil on her and she ran outside. Learned JMIC, Hisar opined that the statement was voluntary and victim was fit throughout making of the statement recorded on 19.9.2019. Thereafter on 10.10.2019 Suman died and the statement recorded was treated as a dying declaration.

The investigation in the case commenced and as per the dying declaration both the accused i.e. the petitioner and his mother Krishna were arrested. Present petitioner was arrested on 22.9.2019. He approached learned Addl. Sessions Judge, Hisar for grant of bail, however, after hearing both the parties, the same was declined vide order dated 15.7.2020. Aggrieved by the same, petitioner approached this Court praying for grant of regular bail. His first petition seeking regular bail was dismissed by this Court vide order dated 17.2.2021.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in this case. Counsel submits that present petitioner is Jeth in relation to the deceased. Counsel further submits that as per the aforesaid dying declaration the incident took place in the presence of the husband and other family members of the deceased which is totally unnatural and cannot be believed. Counsel submits that the co-accused i.e. the mother of the petitioner namely Krishna approached the learned Addl. Sessions Judge, Hisar for grant of bail, which was allowed vide order dated 7.3.2020. Counsel submits that though the veracity of the dying declaration would be assessed at the conclusion of the trial, however, the truth of the same is doubted for the very fact that now the husband of the deceased namely Bajrang and his mother Santosh, who is mother-in-law of the deceased have been examined before the learned Trial Court as PW-1 and PW-2 respectively. Counsel has placed on record their depositions which would show that they have not supported the case of the prosecution and on the request made by learned P.P they were declared hostile. Counsel submits that petitioner is behind bars since 22.9.2019 and as almost half of the witnesses have already been examined, there cannot be any

threat from the petitioner for scuttling the ongoing trial. Counsel submits that in the overall facts and circumstances of the case petitioner deserves to be enlarged on bail.

On the other hand, learned State counsel has opposed the contentions made by learned counsel for the petitioner and submits that the case of the prosecution rests on the dying declaration and needs no corroboration. However, State counsel submits that in all there are 18 prosecution witnesses out of which 11 have been examined so far.

I have heard learned counsel for the parties at length and have gone through the records carefully.

Petitioner is behind bars since 22.9.2019. No doubt the case of the prosecution is based on the dying declaration of the deceased and the veracity of the same is subject matter of the trial. From the arguments advanced by both sides, it is apparent that both the material witnesses have already been examined and the petitioner is behind bars for the last about 2 years and 4 months. The trial would take sufficient time to conclude.

In the totality of circumstances and without making any observations on merits, present petition is allowed. Petitioner be enlarged on bail subject to satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

28.01.2022

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No