

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

**CRM-M No.24788 of 2022 (O&M)
Decided on: 29.11.2022**

Joginder @ Nikka

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. R.K. Lathwal, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.589 dated 14.07.2018 registered under Sections 302, 120-B, 216, 34 of the Indian Penal Code, 1860 (in short 'IPC') and Section 25 of the Arms Act, at Police Station Assandh, District Karnal.

Counsel for the petitioner has argued that the petitioner was granted interim bail vide order dated 31.07.2020 on medical grounds in CRM-M No.21197 of 2020. Later on, after availing the interim bail, the petitioner surrendered back before the Jail Authorities on 03.02.2021. It is also submitted that the petitioner, in the intervening period, has not misused the concession of interim bail. It is further argued that the co-accused of the petitioner namely Raj Kumar @ Michal, Pintu and Sandeep have already been granted the concession of

regular bail vide orders dated 18.11.2020, 13.01.2021 and 02.12.2021 passed in CRM-M No.20440 of 2020, CRM-M No.654 of 2021 and CRM-M No.18257 of 2021, respectively. The operative part of the order dated 02.12.2021, passed in CRM-M No.18257 of 2021, reads as under:-

*“...Learned counsel for the petitioner relies upon order dated 18.11.2020 passed in **CRM-M-20440-2020**, vide which co-accused Raj Kumar alias Michal has been granted the concession of regular bail by passing the following order:-*

“This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 589 dated 14.07.2018, registered under Sections 120-B, 302, 34 of the IPC and Sections 25, 54, 59 of the Arms Act at Police Station Assandh, District Karnal.

Learned counsel for the petitioner submits that as per the allegations in the FIR, registered on the statement of complainant Anil, it is stated that he was having a liquor vend and earlier petitioner Raj Kumar alias Michal was his employee, whose services were terminated and a new salesman, namely Sripal, was appointed. It is further stated that on that account, petitioner, along with co-accused Khabbar @ Ravinder, Surender and one unknown person, came to the liquor vend of the complainant and Khabbar @ Ravinder fired a shot on the chest of said Sripal and thereafter, they all ran away from the spot. Thereafter, said Sripal called complainant and informed him about the incident and he was taken to a hospital, where he

died.

Learned counsel for the petitioner further submits that petitioner is in judicial custody since 17.08.2018 and said Sripal died on account of only one fire arm shot which was in fact fired by co-accused Khabbar @ Ravinder. It is further submitted that even the recovery of weapon was effected from the said co-accused.

Learned counsel further submits that during investigation, two of the co-accused, namely Surender and Sanju, were found innocent and after examination-in-chief of Anil/complainant was recorded, an application under Section 319 Cr.P.C. was moved for summoning the said accused, however, the same was dismissed by the trial Court as well as by this Court.

Learned counsel further submits that cross-examination of Anil was never conducted and in the meantime, he has died in an accident, therefore, it will be a debatable issue to be decided during trial whether the said evidence can be read as evidence in the absence of cross-examination.

Learned State counsel could not dispute the factual position, however, on the basis of the affidavit of DSP, Assandh, has opposed the bail on the ground that even in the disclosure statement of Khabbar @ Pintu, the name of the petitioner has surfaced and the recovery of weapon was also effected from Khabbar @ Pintu.

Learned State counsel further submitted that even the petitioner has made a disclosure statement to this effect and another co-accused Joginder @ Nikka has also made disclosure statement in another FIR, wherein a 315 bore pistol

was recovered from him.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the fact that petitioner is not involved in any other case and complainant Anil has died prior to conducting his cross-examination and also in view of the fact that petitioner is in judicial custody since 17.08.2018, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaqa Magistrate, concerned.

Learned counsel for the petitioner further submits that as per the allegations in the FIR, the petitioner along with one Khhabar alias Ravinder were armed with fire arms and Khhabar alias Ravinder fired a gun shot on the chest of the victim whereas, the petitioner has allegedly fired the shot in the air.

Learned counsel for the petitioner further submits that there is only one injury suffered by the victim which is not attributed to the petitioner..”

For the sake of brevity, the facts, as disclosed in the FIR, are not reproduced again.

Counsel for the State, on a Court query, as to whether the cross-examination of the complainant/informant, Anil, who appeared as a prosecution witness was completed before his death or not.

Counsel for the State, in response, argued that only the examination-in-chief of Anil was recorded and thereafter, he had died.

Counsel for the State has also placed on record the certified copies of the statements of all the prosecution witnesses, examined so far, which are taken on record as Mark X, collectively.

A perusal of the statement of PW-5 Vipin son of the deceased Shri Pal reflects that Shri Pal was working as a Salesman on a liquor vend and on 14.07.2018, when he was present at his house, he received a telephone call from his father (deceased Shri Pal) from Mobile No.99964-27431, on his mobile phone that Sanju, Salinder, Khabbar @ Pintu, Michael @ Raj Kumar and 02 unknown persons came on a motorcycle and inflicted fire-arm injuries on him. Thereafter, he along with Mahipal reached the place of occurrence and shifted his father to Government Hospital, Assandh, from where he was referred to KCGMCH, Karnal, where he was declared dead. Even in the statement of PW-5 Vipin, the petitioner is not named as a person, who was informed by the deceased himself as an assailant.

A perusal of the statement of another witness i.e. PW-7 Mahipal, who accompanied PW-5 Vipin to Hospital where the deceased Shri Pal was admitted at the first instance and was later on, shifted to another hospital at Karnal, has also stated that his nephew i.e. PW-5 Vipin, told him that the accused Khabbar @ Ravinder, Raj Kumar @ Michael, Surender, Sanju and 02 other persons, have inflicted fire-arm injuries to his father.

Counsel for the petitioner has argued that in the absence of a right to cross-examine the complainant/deceased Anil, it will be a matter of trial, as to whether the examination-in-chief of the victim, in the absence of the cross-examination, can be read in evidence or not. It

is also submitted that out of 35 PWs, only 25 PWs have been examined and the case is still at the stage of prosecution evidence and as on today, the custody of the petitioner is more than 04 years. Lastly, it is argued that the petitioner was earlier granted interim bail on medical grounds, is still not maintaining good health as his medical condition resurges and he requires urgent medical treatment.

The affidavit of the Investigating Officer is on record.

Counsel for the State as per the affidavit and on verification of the allegations in the FIR, argued that though it has come in the statement of PW-5 Vipin and PW-7 Mahipal as noticed above that the petitioner was not named at the first instance, however, in the investigation, it came that it is the petitioner, who has fired the fatal shot on the chest of the deceased Shri Pal. It is also submitted that the petitioner is involved in some more FIRs and is facing the trial, however, it is not disputed that during the time, when the petitioner was granted interim bail on medical grounds, he has not misused the concession of same and surrendered back before the Jail Authorities on time.

After hearing the counsel for the parties, without commenting anything on merits of the case, considering the fact that the petitioner is in long custody for the last 04 years; he is not maintaining good health; he was initially granted interim bail and has not misused the same; the co-accused of the petitioner are already released on bail; the custodial interrogation of the petitioner is not required; the case is still at the stage of trial as 10 more PWs are yet to be examined and the conclusion of the trial will take some time and further in view of the

statements of PW-5 Vipan and PW-7 Mahipal, who have not named the petitioner as a person, who was named by the deceased on telephone to PW-5 Vipan as an assailant, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

29.11.2022

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