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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.25301 of 2020 (O&M)

Date of decision: 09.03.2022

Lovely

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Deipa Singh, 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.288 dated 24.07.2019, for offence punishable under Sections 323, 34, 384, 506 of the Indian Penal Code, 1860 (in short 'IPC') (Sections 120-B, 148, 149, 302 IPC and Section 3 of SC&ST Act added later) registered at Police Station Pinjore, District Panchkula.

Counsel for the petitioner has relied upon the order dated 06.07.2021 vide which 02 of the co-accused of the petitioner namely Gaurav Rana and Naseem were granted the concession of regular bail in CRM-M No.33045 of 2020 and CRM-M No.37268 of 2020. The operative part of the said order, reads as under:-

“Learned counsel for the petitioners submits that the FIR was registered at the instance of Vishu Goyal and Rakesh Gupta with the allegations that their company M/s Ganesh Royalty Company was granted the contract of mining by Haryana Govt. About 15-20 days prior to

registration of FIR, a dacoity took place in their company and money was snatched from their employees and they were threatened that they will collect the royalty. On the complaint, case was registered against Sonu Nolta, Ismail, Gaurav Rana and some other persons. Out of them, Sonu Nolta, Ismail and Gaurav Rana were not arrested and six other persons, who were arrested, were granted bail. It is further stated that on 23.07.2019, accused persons came to the crusher zone and threatened their employees, but their employees still remained on duty and in the early morning on 24.07.2019, three persons came with covered faces and attacked one of the employee namely Satish Kumar on his head, due to which he fell down on the ground and later on, he was shifted to hospital, where he was declared dead.

Learned counsel for the petitioners further submits that two co-accused of the petitioners namely Happy and Anil have already been granted the concession of regular bail vide order dated 16.07.2020 passed in CRM-M-15454-2020 and the order dated 25.08.2020 passed in CRM-M-23068-2020, respectively. It is also submitted that petitioner Gaurav Rana is in custody for the last more than 01 year and 11 months and petitioner Naseem is in custody for the last more than 01 year and 10 months and 13 prosecution witnesses have been examined and all the material witnesses including the complainants have not supported the prosecution version.

Learned counsel has placed reliance upon the statement of complainants Vishu Goyal and Rakesh Gupta, who appeared as PW1 and PW2, to submit that they have stated that they do not know and have not seen the persons causing injuries and attacking deceased Satish Kumar and their names were told by their employee namely Mandeep Kumar. It was further stated that they have never seen the persons or the accused persons present in the Court through video conferencing. Learned counsel has further referred to the statement of PW3 Mandeep Kumar, who has allegedly given the information to PW1 and PW2, wherein he stated that when he was working, he suddenly heard the voice and saw that deceased Satish Kumar fell down from his bike and when they reached at the spot, he was lying on the ground. With regard to identification of the petitioners, he stated that he had seen the accused persons present in the Court and stated that Nasim, Gaurav Rana, Happy, Lovely and Anil did not cause any injury to deceased Satish Kumar in his presence. This

witness was declared hostile and even in cross-examination by the Public Prosecutor, he did not support the prosecution version.

Learned counsel then referred to the statement of PW4 and PW5 Satya Parkash and Gulshan, who stated that in their presence, the accused never threatened the employees. PW6 Rinku stated that motorcycle of the deceased hit on the divider and he fell down and sustained injuries. This witness also did not identify the accused persons. Similar is the statement of PW7 Mohan @ Billa, who stated it to be a case of accident. Other witnesses are the witnesses, who have arrived at the spot subsequent to the incident and are not the eyewitnesses.

Learned State counsel has referred to the affidavit of Assistant Commissioner of Police, Panchkula, in which it is stated that during the investigation, when the accused persons were arrested, they had made disclosure statement.

On a Court query, whether apart from the disclosure statements, any other evidence has come against the accused persons, he submitted that recovery of danda and motorcycle was effected.”

Counsel for the petitioner has again referred to the statements of PW-4, PW-5 and PW-6, to submit that they have stated that the motorcycle of the deceased had hit the divider and later on, he fell down and sustained injuries. These witnesses have not identified any of the accused persons. Even, PW-7 Mohan @ Billa has stated that it was a case of accident. The other witnesses recorded so far, are the witnesses, who reached at the spot subsequent to the incident and are not the eye-witnesses. It is also submitted that the petitioner is in custody for the last 02 years, 06 months and 18 days and the material witnesses have already been examined and there is no possibility for the petitioner to tamper with the prosecution evidence.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail. Counsel for the State further on the basis of the affidavit of the

Assistant Commissioner of Police, Kalka, also could not dispute the facts as stated in the FIR, however, it is stated that as per the MLR, 06 injuries were found on the body of the deceased. It is further stated that on the disclosure statement of Gaurav Rana, the petitioner – Lovely and Naseem were nominated in the case.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 02 years, 06 months and 18 days; the co-accused of the petitioner namely Gaurav Rana and Naseem are already released on bail; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time due to COVID-19 situation, 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/Illaq 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

09.03.2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No