

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(224)

CRM-M-28788-2022

Date of decision: - 13.07.2022

Dushyant

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Manish Soni, Advocate,
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a third petition under Section 439 Cr.P.C. for grant of regular bail in FIR No.1027 dated 28.05.2020, registered under Sections 148, 149, 302 and 120-B IPC and Section 25(1-B)(a) & 27(1) of the Arms Act, at Police Station Shivaji Nagar, District Gurugram.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 02.06.2020 and out of total 20 witnesses, 2 have been examined and 18 are yet to be examined, thus, the trial is likely to take time. It is further submitted that the petitioner is not involved in any other case. It is also submitted that when the second petition i.e., CRM-M-17544-2022, under Section 439 Cr.P.C. was filed, the following order was passed by this Court: -

"This is a second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.1027 dated 28.05.2020

registered under Sections 148, 149, 302, 120B IPC and Sections 25(1-B)(a) and 27(1) of the Arms Act, at Police Station Shivaji Nagar, District Gurugram.

In the first petition for regular bail filed by the petitioner, on 21.09.2021, this Court was pleased to pass the following order :-

“This is the first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.1027 dated 28.05.2020, registered under Sections 148, 149, 302, 120-B IPC and Section 25(1-B)(a) & 27 (1) of Arms Act, at Police Station Shivaji Nagar, District Gurugram.

Learned State counsel, on instructions from ASI Mandeep, has pointed out that summons have been issued for 22.10.2021, for examining Ram Gopal, Kamla Devi and Shivani.

In view of the statement made by learned State counsel, learned counsel for the petitioner wishes to withdraw the present petition at this stage with liberty to file a fresh petition after the three material witnesses i.e., complainant, and wife as well as daughter of the complainant are to be examined.

Accordingly, the present petition is dismissed as withdrawn at this stage with the aforesaid liberty.

It is, however, made clear that as and when the said bail application would be filed, the same would be considered independently.

(VIKAS BAHL)
JUDGE

September 21, 2021.”

Learned State counsel, on instructions from SI Duli Chand, has pointed out that neither Ram Gopal, nor Kamla Devi nor Shivani has been examined.

Learned counsel for the petitioner, in view of the above, seeks to withdraw the present petition, at this stage, with liberty to file a fresh petition after the said three witnesses have been examined.

In view of the statement made by learned counsel for the petitioner, the present petition is dismissed as withdrawn at this stage, with liberty aforesaid.”

Learned counsel for the petitioner has argued that all the said three witnesses i.e., Ram Gopal, Shivani and Kamla have been examined and the said witnesses have not supported the case of the prosecution and even the alleged eye witness i.e., Shivam Kumar PW-3 has not supported the case of the prosecution. In support of his arguments, learned counsel

for the petitioner has made reference to the statements of the said witnesses, which have been annexed along with the present petition. It is also submitted that even as per the FIR, the alleged gun shot injury suffered by the deceased had been attributed to co-accused Bhanu Sharma @ Dhillu and not to the present petitioner. It is further submitted that neither the petitioner has been attributed any injury, nor he was armed with any weapon. It is submitted that even as per the postmortem report, there was one gun shot injury, which has been attributed to co-accused Bhanu Sharma @ Dhillu.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that PW-3 Shivam Kumar has supported the case of the prosecution in the examination-in-chief and it is only in the cross-examination, which was recorded after a break of 45 minutes, that the said PW-3 Shivam Kumar had given the statement in favour of the present petitioner.

This Court has heard the learned counsel for the parties and has perused the paper book.

The petitioner has been in custody since 02.06.2020 and out of total 20 witnesses, 2 have been examined and 18 are yet to be examined, thus, the trial is likely to take time. The petitioner is stated to be not involved in any other case. The earlier order dated 05.05.2022, passed in CRM-M-17544-2022, as has been reproduced hereinabove, with respect to the second petition filed under Section 439 Cr.P.C., would show that the same was withdrawn with liberty to file a fresh petition after the three material witnesses, namely, Ram Gopal, Shivani and

Kamla are examined. The said witnesses are stated to have been examined. Perusal of the statements of the said three witnesses i.e., PW-8/Ram Gopal (page No.40 of the paper-book), PW-8/Shivani (page No.45 of the paper-book) and PW-10/Kamla (page No.50 of the paper-book), who are father, sister and mother of Manna (deceased), respectively, have not supported the case of the prosecution and had submitted that the accused present in the Court, have nothing to do with the death of Manna. Even PW-3 Shivam Kumar, who was also stated to be an eye witness, in his cross-examination (page 35 of the paper-book) had specifically stated that Dushyant (petitioner) was not present at the spot at the time of the alleged incident, though he was a friend of the co-accused, thus, qua the present petitioner, the said witness has not supported the case of the prosecution in his cross-examination. Even as per the FIR, the alleged gun shot injury had been inflicted upon the deceased by co-accused Bhanu Sharma @ Dhillu and not by the present petitioner and neither the present petitioner has been alleged to have given any injury, nor to be carrying any weapon. The said facts, as well as the liberty granted vide the above-said order dated 05.05.2022 passed by this Court, and also the custody period undergone by the petitioner, would entitle the petitioner to file the present petition in view of the change of circumstances.

Keeping in view the above-said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

July 13, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	No