

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-32521-2021 (O&M)
Date of decision: 25.04.2022

Narender @ Neetu

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vishal Nehra, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this 2nd petition is for grant of regular bail in FIR No.44 dated 13.02.2017 under Section 365 IPC (Sections 364, 302, 201, 120-B, 450, 511, 506 IPC and Section 25 of Arms were added during investigation), registered at Police Station City Gohana, District Sonapat; earlier one was disposed of vide order dated 28.07.2021.

Learned counsel for the petitioner relies upon the order dated 04.01.2021 passed in CRM-M-20649-2020, vide which co-accused Ram Karan was granted the concession of regular bail, by making the following observations: -

“...Counsel for the petitioner has argued that as per the allegations in the FIR, registered at the instance of Prehlad son of

Kehar Singh, it is stated that on 11.02.2017, he had gone to his in-laws house in village Rukhi where he was informed that his brother-in-law Balbir Singh had gone to Chopra Colony, Gohana. Thereafter, he came back and on 13.02.2017, he again went to village Rukhi and was informed that his brother-in-law Balbir Singh has not returned back. Thereafter, he looked for him by making enquiries from some persons and information was given to the police for registration of the FIR.

Counsel for the petitioner has further submitted that thereafter, an SIT was constituted and during the investigation of FIR No.100 of 2017 registered under Sections 332, 353 and 307 IPC at Police Station Tilak Nagar, New Delhi, the police arrested 04 persons namely Ramesh @ Mesha Pehalwan, Sushil @ Sheela, Sushil @ Ullu and Amit @ Lamba and they made their disclosure statements before the police that they in conspiracy with their accomplices had murdered Balbir Singh, Sandeep Badwasani and Surender Rathi on 11.02.2017 at Gohana by fire-arms.

The police, thereafter, investigated the case further and another FIR No.55 of 2017 was also registered at Police Station Sadar Sonapat. The petitioner was arrested in both the FIRs on the basis of the disclosure statement made by one of the co-accused Rajesh @ Sarkari.

Counsel for the petitioner has further argued that the petitioner is in custody since 21.06.2017 and out of 69 prosecution witnesses, 08 PWs including the complainant Prehlad as well as

03 prosecution witnesses who were cited as an eye-witnesses namely Ashu, Kuldeep and Sachin, have already been examined as PW-3 to PW-6.

Counsel for the petitioner has also submitted that all the 03 witnesses were declared hostile as they did not support the prosecution version and when they were cross-examined by the Public Prosecutor and were confronted with their statements, they have even declined having made any such statement.

Counsel for the petitioner has further submitted that even in the statement of Prehlad, who appeared as PW-4, it has come that he was informed by his brother-in-law that he was under threat from the petitioner and one Boda. It is further submitted that Prehlad has further stated that the aforesaid 03 persons were killed in the house of Boda at Chopra Colony, Gohana by the petitioner – Ram Karan, Naresh, Jasbir, Sonu Malik Inspector Gandhra, Satyawar Malik Gandhra, Vicky Chittana, Ajit Fauji, Ramesh @ Meesa, Vijay Farmana, Amit @ Lamba, Sheela Sarpanch, Rajesh @ Sarkari, Boda and his wife.

Counsel for the petitioner has also submitted that Naresh was declared innocent whereas 02 persons namely Boda and Satyawar Malik have died during the course of trial.

Counsel for the petitioner has placed on record the orders granting regular bail to Jasbir, Ajit Fauji, Amit @ Lamba, Sheela Sarpanch as well as Rajesh @ Sarkari on whose disclosure, the petitioner was nominated as an accused.

Counsel for the petitioner has further relied upon the order dated 15.09.2020 vide which the petitioner was granted bail in FIR No.55 of 2017 wherein certain observation was made and this fact was noticed that Rajesh @ Sarkari has been granted the concession of bail on whose disclosure statement, the petitioner was nominated as an accused in the present case.

Counsel for the petitioner has, thus, argued that considering the fact that the entire case is based on circumstantial evidence and 03 of the witnesses have been declared hostile and it will be matter of trial as to how the statement of Prehlad is to be appreciated as the counsel for the petitioner submits that it is a hear-say evidence.

Counsel for the petitioner has also placed on record the orders Annexures A-3 to A-10, vide which he has been either granted the concession of bail in other FIRs or has been acquitted by the trial Court after facing the full length trial, in the cases which are mentioned in the custody certificates filed by counsel for the State.

Counsel for the State, assisted by counsel for the complainant, has however, opposed the prayer for bail on the ground that the petitioner is involved in some other FIR but could not dispute the fact that either he is on bail or he has been acquitted in some of the cases.

Counsel for the complainant has further argued that if the petitioner is granted bail he may try to influence the prosecution

witnesses, however, it is not disputed that all the private witnesses have already been examined and the petitioner is in custody for the last more than 3 ½ years. It is also not disputed that the petitioner was nominated on the basis of the disclosure statement of co-accused Rajesh @ Sarkari, who has already been granted the concession of regular bail in both the FIRs.

Counsel for the State also could not dispute the fact that in FIR No.100 registered at New Delhi, the petitioner is not nominated as an accused.

After hearing the counsel for the parties, considering the long custody of the petitioner and also in view of the stage of the trial and also the fact that 03 of the prosecution witnesses were declared hostile; 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.”

For the sake of brevity, facts are not reproduced again.

Learned counsel submits that in fact, with regard to same incident, two FIRs were registered; one at Police Station Gohana City, District Sonipat (present FIR) and second FIR i.e. FIR No.55 dated 14.02.2017 was registered at Police Station Sadar Sonipat, in which the petitioner has already been released on bail by the Court of Sessions vide order dated 03.11.2020. It is further submitted that while granting bail to co-accused Ram Karan, this Court noticed

the fact that three prosecution witnesses i.e. PW3 to PW6 namely Ashu, Kuldeep and Sachin, who were cited as eyewitnesses, have not supported the prosecution and they were declared hostile and with regard to the petitioner, even they have not identified him as one of the accused.

Learned State counsel, on the basis of status report by way of affidavit of Additional Superintendent of Police, Gohana, Sonipat, filed in the Court today, has not disputed the fact that two FIRs were registered and in one FIR, the petitioner is already on bail. It is further submitted that as per disclosure statement of co-accused Ram Karan, the car used in the commission of offence was recovered in aforesaid FIR No.55. It is also submitted that FIR No.44 was registered in Police Station Gohana City, at the instance of Pralahad regarding missing and abduction of his brother Balbir and FIR No.55 was registered in Police Station Sadar Sonipat on a complaint given by Vinita.

Learned State counsel has further submitted that as per investigation, it was found to be a case of gang rivalry between two groups, as on earlier occasion, one Sandeep Barwasani has murdered one gangster Vikas @ Dudhia in Court Complex, Ganaur and later on, co-accused Ram Karan conspired to murder aforesaid Sandeep Barwasani along with two of his associates and all of three were murdered and their dead bodies were thrown in a canal in Uttar Pradesh. It is not disputed that three prosecution witnesses named above have not prosecution version. It is also submitted that the case is still at the stage of recording the prosecution evidence.

As per the custody certificate filed in the Court today, the petitioner is in custody for the last 04 years and 10 months.

After hearing learned counsel for the parties, without commenting

anything on merits of the case and considering the fact that the petitioner is in long custody and the case is still at the stage of prosecution evidence and also in view of the fact that co-accused Ram Karan has already been released on regular bail, considering the fact that three eyewitnesses have not supported the prosecution version, 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, concerned.

25.04.2022

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[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No