

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

CRM-M-36095-2021

Date of Decision : April 06, 2022

Nishkarsh @ Ashu

....Petitioners

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Kulvir Narwal, Advocate
 for the petitioner.

 Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

 This is the first petition under under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.145 dated 22.5.2020 under Sections 302, 34 IPC, registered at Police Station Salhawas, District Jhajjar.

 Counsel for the petitioner has relied upon the order dated 5.7.2021 passed in CRM-7926-2021 vide which Devender @ Nad, one of the co-accused of the petitioner, was granted the concession of regular bail. The operative part of the order reads as under :-

 “Counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of the complainant Naresh, his brother Dharampal was unmarried and was residing in a room constructed in their fields. On 22.05.2020 in the morning, one Pawan told him that his brother is lying dead outside the room and thereafter, when he reached the fields, he saw was brother lying dead.

Initially, he suspected that he has been killed by someone having a grudge against him. It is further submitted that later on, the supplementary statement of the complainant Naresh was recorded on 24.05.2020 i.e. after 02 days of the incident, in which he has stated that on 21.05.2020, when he had gone for a walk, he had seen 03 persons namely Deepak @ Durki, Niskarsh and Devinder (petitioner herein), drinking liquor near his fields. Now on enquiry, he has come to know that about 15-16 months ago, the co-accused Niskarsh and Rakesh had given beatings to a boy of village Amadalpur and when the police, after registration of the case, came for the investigation, the deceased Dharampal has disclosed the name of Niskarsh and Rakesh and due to that grudge, he has been murdered.

Counsel for the petitioner has further submitted that the petitioner was arrested on the basis of the disclosure statement of the aforesaid 02 accused persons that he was also part of the conspiracy and committed the murder of Dharampal. It is also submitted that now the FSL report has come and no blood stains were found either on the clothes or on the stick recovered from him.

Counsel for the State has filed the affidavit of the Investigating Officer wherein it is stated that the petitioner was arrested on 17.07.2020 on the basis of the disclosure statement of the co-accused Deepak @ Durki and Niskarsh, who were arrested on 01.06.2020 and 08.06.2020, respectively. It is further stated in the affidavit that the disclosure statement of all the 03 accused persons including the petitioner make out that they in conspiracy with each other have committed the murder of Dharampal by giving

him beatings with sticks.

A perusal of the confessional statement of the petitioner – Devender show that after consuming liquor they went to Dharampal at his fields and saw him lying on cot and he started abusing them and then, they started giving beatings to him with wooden sticks.

A perusal of the statement of Deepak @ Durki, on the basis of which, the petitioner was nominated in the present FIR, show that when they reached in the fields of Dharampal, he was seen lying on a cot and they started beating him. It is not mentioned in the disclosure statement of Deepak @ Durki that Dharampal started abusing all the 03 accused persons and therefore, there is a variation in the 02 statements.

In reply, counsel for the petitioner has argued that at the first instance, the complainant Naresh has not named the petitioner or any other person and 02 other statements of Mainpal and Dharam Raj, is only to the extent that at midnight, they were consuming liquor together. It is, thus, submitted that it would be a matter of evidence whether in the alleged conspiracy, the petitioner has a meeting of mind with them or that any motive is attributed towards him. It is also submitted that the petitioner is in custody since 17.07.2020.

Counsel for the petitioner has further argued that though the petitioner is involved in one more case under Section 332 IPC, but he is on bail. It is also submitted that since the entire case is based on circumstantial evidence and the next date of hearing before the trial Court is 24.08.2021 and till date only 02 PWs have been examined and there is no

possibility for the petitioner to tamper with any prosecution evidence.”

Counsel for the petitioner submits that, later on, another accused, namely, Deepak @ Dudki was also granted the concession of regular bail vide order dated 9.8.2021 passed in CRM-M-30463-2021.

Counsel for the petitioner further submits that the petitioner is the first offender and is not involved in any other case and as of today, he is in custody for the last more than 01 year and 05 months.

Reply by way of affidavit of the Investigating Officer is on record, wherein it is stated that during the investigation, supplementary statement of complainant-Naresh Singh, brother of Dharam Pal was recorded, in which it is recorded that he has seen the accused persons consuming alcohol on 21.5.2020. Later on, all the three accused were arrested.

It is further stated that after his arrest, the petitioner made a disclosure statement and on the basis of which a wooden sticks, *jelly* and a motorcycle, which was used in the commission of the offence, were got recovered. It is also stated that as per the disclosure of the petitioner, he was having a grudge against deceased Dharam Pal, as the deceased had disclosed their names to the police in some other connected cases, which were pending and if the same were not disclosed, they were not arrested.

Counsel for the petitioner further state that except the disclosure of the petitioner, there is no other evidence and the same is not corroborated by any other evidence and there is no other case

pending against the petitioner, therefore, the own disclosure of the petitioner stating that he has some grudge against the deceased on account of giving a false complaint or information to the police against the petitioner, is not substantiate.

A perusal of the custody certificate dated 8.1.2022 shows that the petitioner is in custody for the last more than 01 year and 05 months and only three prosecution witnesses have been examined till date.

Without commenting anything on the merits of the case, considering the fact that co-accused of the petitioner have already been released on bail; he is not involved in any other case; he is in custody for the last more than 01 year and 05 months and the conclusion of the trial will take some time, this petition is allowed and the petitioner is ordered to be released on bail, subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.

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

April 06, 2022
satish

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