

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

CRM-M-36629-2021

Date of Decision: 21.11.2022

KuldeepPetitioner

Versus

State of Haryana..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

...

Present: Mr. R.S.Cheema, Sr. Advocate with
Mr. R.K.Trikha, Advocate
for the petitioner.

Mr. Rohit Arya, DAG, Haryana.

...

MANJARI NEHRU KAUL, J. (Oral)

This is the third petition under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in FIR No. 119 dated 14.03.2019 under Sections 148/149/323/302/120-B/216 IPC and Section 25 of the Arms Act registered at Police Station Rai, Sonapat.

Learned senior counsel appearing for the petitioner submits that subsequent to the withdrawal of the previous petitions only 15 out of the 81 prosecution witnesses cited stand examined and thus there is no likelihood of the trial concluding in the near future. He has also submitted that 02 material witnesses i.e the complainant who is none other than the brother of the deceased and an eye witness while stepping into the witness box failed

to support the case of the prosecution as a result of which they were declared hostile. On merits, learned senior counsel while inviting the attention of this court to the FIR in question, which has been annexed as Annexure P1, submits that the deceased was allegedly gunned down by six youths at the service station, when he had gone for getting his vehicle serviced. However, the petitioner was not even named in the FIR by the complainant i.e. brother of the deceased, much less any role or motive attributed to him qua his involvement in the crime in question. Learned senior counsel submits that the petitioner was attributed the role of a conspirator and nominated as an accused after 4 months of the registration of the FIR in question only on the basis of the disclosure statements of co-accused Akshay and Sampat Nehra dated 24.07.2019 and 25.07.2019, respectively. It has also been submitted that false implication of the petitioner found further credence from the fact that on the date of alleged occurrence the petitioner was in custody in another case and apart from the aforesaid disclosure statements, no evidence whatsoever had been collected by the investigating agency which could in any manner link the petitioner with the crime in question. Learned senior counsel lastly submits that no doubt the petitioner is involved in a number of criminal cases but he stands acquitted in most of them.

Per contra the learned State counsel while opposing the prayer and submissions made by the learned senior counsel for the petitioner on instructions has not been able to controvert the factual aspect of the submissions made qua the role attributed to the petitioner. Learned State counsel has also conceded that no evidence was collected by the Investigating agency after commission of the crime in question from which

it could be even remotely inferred that the co-accused who allegedly gunned down deceased Narinder had been in constant touch with the petitioner. Learned State counsel however submits that the petitioner is accused of having conspired the commission of a grave offence on account of previous enmity and that he is a man of criminal antecedents as he is involved in a number of criminal cases. However, at the same time he has not disputed that in most of the other criminal cases the petitioner has been acquitted. The State has not been able to dispute the factum of the two material witnesses having not supported the case of the prosecution during trial.

I have heard the learned counsel for the parties and perused the relevant material on record.

The crime in question undoubtedly is of grave and serious nature and admittedly there are several criminal cases pending against the accused. However, these factors cannot by themselves be the grounds to decline the concession of bail to the petitioner, more so, when the two material witnesses i.e the complainant (brother of the deceased) and an eye witness have not supported the case of the prosecution while stepping into the witness box, due to which they were declared hostile. Further, the petitioner has been in custody for more than 04 years having been arrested on 04.10.2019 and the trial is unlikely to conclude in the near future as only 15 prosecution witnesses out of the 81 cited have been examined till date. In addition to this, the petitioner has been nominated as an accused only on the basis of the disclosure statements of co-accused Sampat Nehra and Akshay.

In the facts and circumstances of the case as enumerated hereinabove, this court deems it fit to allow the instant petition. The petitioner is admitted to bail to the satisfaction of trial Court/Duty

Magistrate. However, it is made clear that any observation made herein shall not be construed as an expression of opinion on the merits of the case.

21.11.2022
rupi

(MANJARI NEHRU KAUL)
JUDGE

Note: Whether speaking/reasoned	Yes / No
Whether Reportable:	Yes / No