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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.36729 of 2022 (O&M)

Date of decision: 14.11.2022

Sonu Rathi

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Maninder Singh Saini, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 2nd 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.0007 dated 15.02.2019, for offence punishable under Sections 302, 201, 34 of the Indian Penal Code, 1860 (in short 'IPC') (Sections 202, 212, 216, 120-B IPC added later) and Section 25 of the Arms Act, 1959, registered at Police Station GRP, Jind District Jind.

The earlier one was dismissed as withdrawn on 29.07.2020.

Counsel for the petitioner has argued that the new ground for filing this 2nd petition is that the petitioner is in long custody and some of the co-accused have been granted bail, considering the fact that PW-6 Bimla Devi, mother of the deceased Nitin has not identified the co-accused including the petitioner in the Court and has further stated

that she do not know the remaining accused as the allegation are against the accused Rakesh, Gabbu, Ankit and Binder that they have committed the murder of her son Nitin.

Counsel for the petitioner has relied upon the order dated 03.08.2022 passed in CRM-M No.7330 of 2022, vide which the co-accused Parveen was granted regular bail. The operative part of the said order, reads as under:-

“Learned counsel for the petitioner has relied upon the order dated 20.07.2022 passed in CRM-M-1832-2021, vide which regular bail was granted to co-accused Bhim @ Ankit @ Vivek. The operative part of the order reads as under: -

“Learned counsel for the petitioner submits that new ground for filing this second petition is the now the investigation is complete, challan stands presented and out of total 42 prosecution witnesses, only 10 PWs have been examined and nothing has come against the petitioner except his own disclosure statement and disclosure statement of co-accused and as on today, he is in custody for the last about 02 years and 07 months and is not involved in any other case except one FIR under Section 153-A IPC.

Learned counsel further submits that as per allegations in the FIR, on 15.02.2019, an information was received that a dead body is lying along the railway track. Later on, statement of Bimla, mother of deceased Nitin @ Laddi was recorded, in which she raised a suspicion that his son has been murdered on account of rivalry. Later on, during investigation of the FIR, names of Ankit son of Mohinder and Balinder @ Undar @ Binder son of Gulab Singh were surfaced, who were arrested in another FIR No.157 dated 27.08.2019 under Section 25 of Arms Act, registered at Police Station Pillukhera, District Jind. Their disclosure statement was recorded, in which that they stated that they took Nitin @ Laddi on motorcycle and shot him dead near railway line. Thereafter, both these accused were taken on production warrants and joined the

investigation and suffered separate disclosure statements and nominated Rajiv @ Gabhu, Rakesh and Sonu, who gave them Rs.1.50 lacs and they along with another co-accused Parveen went to U.P. for purchasing the weapon and ammunition, where they met Bhim @ Ankit @ Vivek (petitioner) and purchased 30 live cartridges from him. On the basis of their further disclosure statement, another co-accused Rakesh, Rajiv @ Gabhu, Sonu Rathee and Parveen were also nominated and on their disclosure statement also, name of the petitioner as supplier of the firearm surfaced.

Learned counsel has referred to disclosure statement of all the accused, to submit that there is no consistency in the said statements. As per disclosure statement of co-accused Balinder Singh Binder @ Andru, co-accused purchased pistol and cartridges from one person namely Gautam and it came that when the co-accused went to U.P., he purchased pistol and 30 live cartridges from Gautam, resident of Village Kheri Pati,, Shamli, U.P. Learned counsel has referred to another disclosure statement of this accused, in which he stated that accused went to U.P. to purchase 06 pistols and 30 bullets from Bhim resident of Bahavari, U.P.

Learned counsel has further referred to disclosure statement of accused Ankit, in which it has come that they purchased the firearms from one Sahil. It is thus submitted that it will be a matter of trial, whether co-accused have purchased the weapons from the petitioner or from some other person, as identity of the petitioner, who has sold the same, is yet to be proved. It is further submitted that there is no allegation that the petitioner was part of the conspiracy or he was present at the spot, when the co-accused committed murder of Nitin @ Laddi. It is also submitted that statement of mother of the deceased has already been recorded, in which no incriminating evidence has come against the petitioner.

Learned State counsel, on the basis of affidavit of Inspector Devender Kumar, SHO, Police Station, GRP Jind, in which contents of the FIR and statement of mother of the deceased have been verified, has submitted that in successive disclosures made by the accused persons, all of them were arrested and they stated that they purchased the firearms along with cartridges from U.P. and in one of the statement of accused Balinder @ Ander @ Binder, name of the petitioner surfaced as the supplier of the firearms.

Even in the disclosure statement of the petitioner, it has come that accused came to him from U.P., where he took the money in lieu of supplying the illegal weapons. It is further stated that in the affidavit that since the petitioner along with other accused hatched conspiracy to commit the murder of Nitin @ Laddi, in furtherance of the money given by co-accused Rakesh and Rajiv @ Gabhu, Balinder and Ankit got the firearms from the petitioner, therefore, his involvement is made out in this case.

After hearing learned counsel for the parties, without commenting anything on merits of the case and going through the allegations against the petitioner as well as disclosure statements of co-accused and his own disclosure statement, it will be a matter of trial whether his identity is proved or not, as per evidence led by the prosecution and it will also be a matter of trial whether the petitioner was part of the conspiracy with other accused in committing the murder of Nitin @ Laddi, as in the disclosure statement of co-accused, only allegation is that they had purchased the weapon from the petitioner and it has not come in their disclosure statements that the petitioner was part of the conspiracy and also considering the fact that the petitioner is in custody for the last 02 years, 07 months and 01 day, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.”

It is submitted that allegations against the petitioner are identical to that of co-accused Bhim @ Ankit @ Vivek that he along with co-accused Bhim @ Ankit @ Vivek and three other persons hatched a conspiracy to kill Nitin @ Laddi.

Learned counsel has argued that PW6 Bimla Devi, mother of deceased, has identified accused Rakesh, Gabbu, Ankit and Binder in the Court and the petitioner was not identified by her. Learned counsel has further referred to statement of PW8 Jatin, brother of deceased, who had not supported the prosecution version, by stating that I do not know who had murdered his brother Nitin @ Laddi. This witness was declared hostile and when cross-examined by the Public Prosecutor, he did not support the prosecution version and even he resiled from the statement made before the police.

Status report by way of affidavit of Deputy Superintendent of Police, Railways, Hisar is on record and in its para No.13, it is stated that five persons namely Bhim @ Ankit @ Vivek, Rajiv, Balinder, Rakesh and Rinku hatched a conspiracy to commit murder of Nitin @ Laddi and in furtherance of which, Rajiv and Rakesh gave money to Bhim @ Ankit @ Vivek to obtain firearms and aforesaid two persons along with the petitioner had gone to UP to get the firearms along with cartridges.

Learned State counsel could not dispute that in the statement of PW6 Bimla Devi and PW8 Jatin, mother and brother of deceased, nothing has come with regard to conspiracy part, in which the petitioner was found involved.”

Counsel for the petitioner has further submitted that even as per the status report filed in this case, it has come that the motorcycle of the petitioner was borrowed by the co-accused Rakesh and was used by another accused Ankit and Binder in commission of the offence. It is also contended that except the disclosure statement of the petitioner that the motorcycle was borrowed by the co-accused Rakesh or the disclosure statement of the other co-accused is that they have taken the motorcycle from the petitioner and there is no specific allegation regarding the conspiracy that the petitioner had knowledge that the motorcycle will be used for commission of the offence of committing the murder of Nitin @ Laddi. It is further submitted that since the petitioner is in long custody for the last about 03 years, 02 months and 05 days and from the statement of the star witnesses i.e. PW-6 Bimla Devi and PW-8 Jatin i.e. mother and brother of the deceased Nitin @ Laddi, the petitioner is neither named nor identified as one of the accused, who was member of the criminal conspiracy and therefore,

considering the long custody of the petitioner, he may be granted the concession of bail.

Counsel for the State on the basis of the Custody Certificate has, however, submitted that it has come in the disclosure statement of the petitioner that he has given his motorcycle to the co-accused, who committed the offence of murder, therefore, the primary offence of conspiracy is made out as per the disclosure statement.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 03 years, 02 months and 05 days; PW-6 Bimla Devi, mother of the deceased Nitin @ Laddi, has not identified the co-accused including the petitioner in the Court; the co-accused of the petitioner are already released on bail; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time, 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/Illaqa 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

14.11.2022

yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No