

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

CRM-M-41059-2021 (O&M)

DATE OF DECISION: 24.01.2022

Ishwar @ Monia @ Monu

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Aditya Sanghi, Advocate for the petitioner.

Ms. Safia Gupta, AAG Haryana.

ALKA SARIN, J.:

Heard through video conferencing.

This is the second petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.0229 dated 21.08.2019 under Sections 302, 34 and 120-B of the Indian Penal Code, 1860 (IPC) and Section 25 of the Arms Act, 1959 registered at Police Station Uklana, District Hisar, Haryana. The first petition for bail (CRM-M-12650-2020) was dismissed vide a detailed order dated 04.09.2020.

As per the case of the prosecution, on 21.08.2019 a telephonic message was received from one Dharampal resident of Bhaini Badshahpur in the Police Station that a firing incident had taken place in the village and, therefore, they should reach the spot. On receiving the information, Inspector/SHO Hawa Singh along with other Police officials reached the spot in their official vehicle. A telephonic message was thereafter received from MHC

Police Station Uklana that Satbir son of Jita Ram resident of Bhaini Badshahpur had died due to the gun shot and the dead body was lying in the mortuary of Government Hospital, Barwala. On the statement of Pawan Kumar, the brother of the deceased, the FIR had been registered, wherein, it has been alleged that his brother Satbir had gone to the barber shop of Kailash in the village for getting his hair cut at 7 am and after some time a noise was heard in the street. He and his father, Jita Ram, reached the shop of Kailash where they found a number of persons were standing. His brother, Satbir (deceased), was lying in the shop and on seeing the complainant, Satbir (deceased), had stated that Atul, Parmod sons of Balbir and their companion Satish son of Mahabir, residents of Bhaini Badshahpur had fired a shot on his chest and on saying so, he fell unconscious. After arranging the conveyance, they took the brother, Satbir (deceased), to Civil Hospital, Barwala where he succumbed to the injuries. After investigation, the name of the present petitioner came up and he was, thereafter, arrested. The allegation against the present petitioner is that he was waiting there for the co-accused on his motorcycle with the engine running to facilitate the main accused, Atul, in running away.

Learned counsel for the petitioner has contended that the petitioner has not been named in the FIR and neither has any overt act been attributed to him. He has submitted that there has been a change in the circumstances since the dismissal of the first petition for bail inasmuch as vide order dated 16.08.2021 passed in an application under Section 319 CrPC, accused Satbir s/o Mahabir has been summoned by the Trial Court for commission of offences under Sections 302, 34 and 120-B of IPC and Section 25 of the Arms Act, 1959

and, as such, there is virtually a de-novo trial. The petitioner has already been in custody since 27.08.2019.

Learned counsel for the State has opposed the grant of bail. A status report by way of affidavit of Sh. Rohtash Singh, HPS, Deputy Superintendent of Police, Barwala, District Hisar has been filed wherein it has inter-alia been stated that during the course of investigation the petitioner was arrested on 27.08.2019 and his disclosure statement was recorded in pursuance to which a motorcycle was recovered from the fields of the petitioner. It is also stated that the name of the petitioner had figured in the disclosure statement of the co-accused Atul as well in the statement of the eye witness Man Singh. The status report also mentions that the challan was presented on 15.11.2019 and charges were framed on 05.2.2020 and that out of 19 prosecution witnesses 4 prosecution witnesses have been examined.

Heard.

The status report filed by the State is completely silent about the order dated 16.08.2021 passed by the Trial Court whereby accused Satbir s/o Mahabir has been summoned to face trial after an application under Section 319 CrPC was moved. Even the learned State counsel is not in a position to deny that the application under Section 319 CrPC was allowed and that the trial would virtually start de-novo. The petitioner has been in custody for almost two and a half years since 27.08.2019. In such like situation, sufficient mitigating circumstances are made out to extend the concession of bail to the petitioner.

Keeping in view the above facts and without commenting upon the merits of the case, I deem this to be a fit case for grant of regular bail to the petitioner. The petition is allowed and the petitioner is directed to be released on

bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate/Trial Court concerned.

However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.

It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

Disposed off. Pending applications, if any, also stand disposed off.

24.01.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO