

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

CRM-M-37004-2020 (O&M)

Date of decision: 08.09.2022

Sumesh @ Kala

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Nishant Arya, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 80 dated 10.03.2020, registered under Sections 120-B, 148, 149 and 302 of the IPC and Section 25 of the Arms Act, 1959 at Police Station Jind Sadar, District Jind.

Learned counsel for the petitioner has relied upon order dated 10.03.2022 passed by this Court in CRM-M-15209-2020, vide which co-accused Dinesh has been granted the concession of regular bail. The order reads as under:

“Prayer in this 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.0080 dated 10.03.2020, for offence punishable under Sections 148, 149, 302, 120-B of the Indian Penal Code, 1860 (in short 'IPC') and 25 of the Arms Act, 1959 registered at Police Station Jind Sadar, District Jind.

Counsel for the petitioner has submitted that as per

the allegations in the FIR, registered at the instance of Ravinder @ Bucha, his brother Sonu @ Sukhbir, is a partner at a liquor vend and the complainant along with his cousin brother namely Ankit were sitting outside the liquor vend, when his brother Sonu was seen coming on a motorcycle bearing No.HR-31-6333, towards the liquor vend and when he was 150-200 meters away from the liquor vend, a white colour car came from his back side and hit on his motorcycle due to which, he fell down and in the meantime, Sourabh, Sahil and Mard, came down from the car. The complainant and Ankit ran towards the car, thereupon Sourabh took out the illegal pistol and shot on Sukhbir in his waist whereas Sahil and Mard gave kick blows to him. When the complainant and Ankit reached there, all the said 03 persons fled away by boarding a car. He had seen the co-accused Kala and the petitioner – Dinesh were sitting in the car. Thereafter, by arranging a vehicle Sukhbir was taken for treatment to the hospital where he was declared dead.

Counsel for the petitioner has further submitted that, in fact, it is a case of a road-rage as the car of the accused side hit the motorcycle of Sukhbir and later on, the co-accused Sourabh caused fatal fire on the deceased Sukhbir, which resulted into his death. It is also submitted that the petitioner is in custody since 27.03.2020 and investigation is complete, challan stands presented and the complainant Ravinder @ Bucha, has already been examined. Counsel for the petitioner, with reference to the cross-examination of this witness, has argued that though the petitioner was named in the FIR in the aid of Section 120-B IPC, however, in the cross-examination, this witness has stated that the accused party was not having any enmity with his brother or his family. It is also submitted that without prejudice to his

right of defence and trial, the petitioner is ready to pay a sum of Rs.2.50 lacs to the LRs of the deceased.

Counsel for the State has submitted that the deceased Sukhbir was unmarried.

In reply, counsel for the petitioner has submitted that the demand draft of Rs.2.50 lacs will be prepared either in favour of the mother or father of the deceased – Sukhbir.

Reply by way of affidavit of the Deputy Superintendent of Police, Jind, is on record and as per the reply, after verifying the facts as stated in the FIR, it is stated that as per the post-mortem, the deceased died due to the gun-shot injury and the accused were at large when they were apprehended in FIR No.130 dated 18.03.2020 registered under Section 25/54/59 of the Arms Act, at Police Station Sadar Hisar. Later on, they were joined in the investigation of the present FIR and suffered the disclosure statement. The petitioner got the car No.HR-56-B-4287, which belongs to his uncle Rakesh, recovered and the petitioner was found driving the car. It is also stated that the petitioner is involved in one more FIR registered under Sections 147, 148, 323, 348, 447, 452, 506 IPC, apart from the present FIR. It is also stated that challan was presented on 22.06.2020 and out of 27 PWs, only 03 PWs have been examined.

After hearing the counsel for the parties, considering the aforesaid facts and also in view of the fact that the petitioner has volunteered to pay a sum of Rs.2.50 lacs by way of a demand draft, either to the father or mother of the deceased Sukhbir (only for the purpose of bail), without prejudice to his right of defence and trial and also in view of the fact that the petitioner is in custody for the last 01 year, 11 months and 13 days; 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.

This will, however, be subject to the condition that the petitioner will hand over a demand draft of Rs.2.50 lacs favouring the father or mother of the deceased – Sukhbir, at the time of furnishing the bail/surety bonds.”

Learned counsel for the petitioner has submitted that as per FIR, aforesaid co-accused Dinesh was driving the car, whereas the present petitioner was a co-passenger.

Learned counsel further submitted that he has instructions to say that even petitioner is ready to pay an amount of Rs. 2.50 Lakh by way of a demand draft in favour of the father or mother of deceased Sukhbir.

Learned counsel for the petitioner has further submitted that the petitioner is in judicial custody for the last about 02 years and 03 months and out of total 26 prosecution witnesses, only 07 witnesses have been examined so far and it will take a long time in conclusion of the trial.

Learned counsel for the petitioner has further submitted that statement of witnesses Ravinder and Ankit has already been recorded before the trial Court, therefore, there is no possibility for the petitioner to tamper with the prosecution evidence.

Learned State counsel, on the basis of the affidavit of the DSP, Jind, has not disputed the factual position as well as the role of the petitioner.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the aforesaid facts and circumstances, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaq Magistrate, concerned.

However, this will be subject to the condition that the petitioner will hand over a demand draft of Rs. 2.50 Lakh favouring the father or the mother of deceased Sukhbir, at the time of furnishing the bail/surety bonds, which will further be handed over to the person concerned.

08.09.2022
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No