

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-38498-2022
Date of decision : 22.09.2022

Sanjay

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Balraj Gujjar, Advocate for the petitioner.

Mr.Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is a petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.139 dated 05.08.2020 registered under Sections 302 and 34 IPC (Sections 201, 212 and 120-B IPC added later on) and Sections 25/ 27/ 54/ 59 of the Arms Act at Police Station Mohana, Sonapat, Haryana.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 15.08.2020 (2 years 1 month and 6 days) and the investigation is complete and the challan has already been presented and there are 23 witnesses and out of which, only 6 witnesses have been examined and thus, the trial is likely to take time and the petitioner is not involved in any other case. It is further submitted that the complainant is not an eye witness in the present case and he has named the present petitioner on the basis of suspicion. It is argued that as per the prosecution case, which is clear from the disclosure statement of Nitin who is the son of the petitioner, there were 4 persons, who had gone to kill Narender on 04.08.2022 and the said four persons were Nitin, Prince,

Ashwani and Ajay. It is further argued that Ajay was not stated to be armed with any weapon and had not been attributed any injury, whereas the other three persons, i.e. Prince, Ashwani and Ajay were stated to be carrying pistols and they were stated to be the ones who had fired at the deceased. It has been stated that the petitioner is being sought to be arrayed as an accused with aid of section 120B IPC and the petitioner was not even present at the spot and has not been attributed any injury with respect to the deceased. It has further been stated that Ajay, who was one of the persons, stated to be present at the spot, has been granted regular bail by this Court vide order dated 20.07.2022 passed in CRM-M-47260-2021. It has been submitted that nothing has been recovered from the present petitioner.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that Narender had been brutally attacked by the accused persons and had died on account of gun shot injuries, which had been inflicted by Nitin, Prince and Ashwani and even the present petitioner had conspired to kill the said deceased and he also had a motive behind the same. Learned State counsel has produced on record the custody certificate, as per which the custody period, as has been stated by learned counsel for the petitioner, stands reaffirmed.

This Court has heard learned counsel for the parties and has perused the paper book.

The petitioner has been in custody since 15.08.2020 (2 years 1 month and 6 days) and there are 23 witnesses and out of which, only 6 witnesses have been examined and thus, the trial is likely to take time and the petitioner is not involved in any other case. Even as per the prosecution case, four persons had gone on 04.08.2022 to kill Narender and the said

four persons were Nitin, Ashwani, Prince and Ajay. Ajay was not armed with any weapon nor was alleged to have fired, whereas Nitin, Ashwani and Prince were stated to be armed with pistols and were alleged to have fired at the deceased. The petitioner was not present at the spot even as per the case of the prosecution and is sought to be implicated on the basis of the motive attributed to him and also the only allegations levelled against him are that he was a part of the conspiracy. No recovery has been effected from the present petitioner. Co-accused of the petitioner i.e., Ajay has been granted regular bail by this Court vide order dated 20.07.2022 passed in CRM-M-47260-2021.

Keeping in view the above said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case.

However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

September 22, 2022

Davinder Kumar