

(208)

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

CRM-M-41961 of 2020 (O&M)

Date of decision : 17.03.2022

...Petitioner

Jony Kumar

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Aman Pal, Advocate for the petitioner.

Mr. Vikrant Pamboo, DAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is the first petition filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in case FIR No.707 dated 02.08.2018 registered under Section 460 IPC (Sections 323, 396 & 120-B IPC and Section 25 of Arms Act, 1959 added later on) at Police Station Moden Town, District Panipat.

Learned counsel for the petitioner has submitted that in the present case, the petitioner was not named in the FIR and has been named in the disclosure statement of the co-accused Sunny who was arrested along with the other co-accused Rafiq, Salim and Intzar. It is further submitted that the petitioner has been in custody since 03.10.2018 and thus, a custody period of 03 years 05 months and 14 days has been undergone by the petitioner and the petitioner deserves the concession of regular bail on account of being wrongly incarcerated, moreso when 08 more witnesses are yet to be examined in the present case. It is further submitted that the petitioner is not involved in any other case and the complainant has already

been examined. It is argued that there is no established link on the basis of which Rafiq, Salim and Intzar were arrested and thus, the link to arrest the present petitioner is also not established. It is submitted that no test identification parade was conducted. It is further submitted that the deceased who was a 75 year old person, as per PMR had not received any gunshot injury and the cause of death of the said deceased was stated to be on account of neck compression. Learned counsel for the petitioner also submitted that in all, there are seven accused, four of the said accused, who were stated to be standing outside as guards, have been granted regular bail by co-ordinate Bench of this Court vide orders dated 21.08.2020 (Annexure P.4), 02.09.2020 (Annexure P.5), 17.11.2020 (Annexure P.6) and 04.12.2020 (Annexure P.7).

Learned State Counsel has opposed the present application for regular bail and has submitted that three persons out of the seven accused had entered into the house of the complainant Veena Diori and in their effort to commit robbery, had first tied up the complainant and, thereafter, had killed the father of the complainant and had fled away with money and gold jewellery. It is further submitted that during investigation, on 22.09.2018, co-accused Rafiq, Salim and Intzar were arrested and, thereafter, on 30.09.2018, co-accused Sunny was arrested and as per disclosure statement of the said accused, the present petitioner was arrested on 03.10.2018. It is submitted that as per the prosecution case, the petitioner was one of the three persons, who had gone inside. The factum with respect to no test identification parade having been conducted and the custody period and also the fact that the petitioner is not involved in any other case, is not disputed.

This Court has heard learned counsel for the parties and have perused the record. The petitioner was not named in the FIR. No test identification parade had been conducted in the present case. The co-accused of the petitioner, i.e. Rafiq, Salim and Intzar and Sunny were arrested and it is on the basis of the disclosure statement of the co-accused Sunny, that the present petitioner was arrested on 03.10.2018 and since then, the petitioner is in custody and, thus the petitioner has been in custody for more than 03 years and 05 months. In the trial, there are 08 witnesses yet to be examined, therefore, the trial is likely to take time to be concluded. The complainant in the present case has already been examined and it has been noticed in the order dated 04.07.2020, rejecting bail to the present petitioner, that there is some discrepancy in her evidence with respect to the recovery of the articles.

Keeping in view the above-said facts and taking into consideration substantial period of custody undergone by the petitioner and also the fact that the petitioner is not involved in any other case, 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/Magistrate and subject to him not being required in any other case.

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.

17.03.2022*renu***Whether speaking/reasoned:-
Whether reportable:-****(VIKAS BAHL)
JUDGE****Yes/No
Yes/No**