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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.44358 of 2022 (O&M)

Date of decision: 01.12.2022

Gulshan @ Sonu

....Petitioner

Versus

State of U.T., Chandigarh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sandeep Sharma, Advocate
for the petitioner.

Mr. Akashdeep Singh, APP, U.T., Chandigarh.

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.0245 dated 13.09.2018, for offence punishable under Sections 307, 34 of the Indian Penal Code, 1860 (in short 'IPC') (Sections 302 and 324 IPC added later) registered at Police Station Sarangpur, Chandigarh.

Counsel for the petitioner has submitted that the new ground for filing this petition is that the petitioner is in custody for the last 04 years and one the co-accused Rahul @ Matouriya, has been granted the concession of regular bail vide order dated 13.09.2022 passed in CRM-M No.12362 of 2022. The operative part of the said order, reads as under:-

“The present petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case having FIR No. 245 dated 13.09.2018, registered under Sections 307 read with Section 34 IPC at Police Station

Sarangpur, Chandigarh, to which Sections 302 and 324 IPC were added lateron.

The counsel for the petitioner submits that the petitioner has been falsely implicated in the present case by the complainant, whose presence at the spot seems to be doubtful. The counsel for the petitioner further submits that injured eye witness Vijay Kumar son of Subhash Chand, while appearing in the witness box as PW8 has not attributed any fatal injury to the petitioner and PW8 simply deposed that at the time of occurrence the present petitioner started giving blows of helmet to Kuldeep @ Lovkush while co-accused Ajay @ Jinder gave blows of knife to said Kuldeep and when he (PW8) tried to intervene, Ajay also gave knife blow in the right side of his abdomen. The counsel for the petitioner further submits that the petitioner is languishing behind the bars for the last more than 03 years and 11 months and that it will take time for the trial to conclude. The counsel for the petitioner further submits that the petitioner is also facing two other criminal cases but in both the said cases the matter has been compromised. The counsel for the petitioner made prayer that petitioner be granted regular bail.

The counsel appearing for U.T. Chandigarh while opposing the present petition submits that the petitioner is facing serious allegations that he along with his co-accused Ajay and Gulshan who were armed with knives, attacked Kuldeep @ Lovkush and Vijay Kumar and caused injuries to both of them and lateron Kuldeep @ Lovkush succumbed to the injuries. However, the counsel representing U.T. Chandigarh has not disputed the fact that the petitioner is in custody for the last more than 03 years and 11 months and that material witnesses have already been examined including injured eye witness PW8 Vijay Kumar and the fact that it will take time for the trial to conclude. He has also not disputed the status of other two criminal cases being faced by the petitioner.

I have considered the submissions made by counsel for the parties.

As per the custody certificate furnished by the State counsel the petitioner is in custody for the last more than 03 years and 11 months and is involved in two other criminal cases. As per the counsel for the petitioner, now a compromise has been effected between the parties in the said two criminal cases.

As per the allegations appearing in the FIR at the time of occurrence co-accused Gulshan along with two other boys all of whom were armed with knives attacked Kuldeep and Vijay and caused injuries to them. Thereafter, Kuldeep died on account of the aforesaid injuries. Admittedly, after completion of investigation, challan was presented and during trial aforesaid Vijay while appearing in the witness box as PW8 stated that petitioner Rahul and Gulshan started giving the blows of helmet to Kuldeep and then Ajay gave blows of knife to Kuldeep and when PW8 tried to save Kuldeep, he was also attacked by Ajay and he suffered knife blow in right side of his abdomen. So, as per the testimony of aforesaid material witness no fatal blow of knife which resulted in death of Kuldeep, has been attributed to the present petitioner. As has been stated by the counsel representing U.T. Chandigarh all the material witnesses have been examined but it will take time for the trial to conclude. As the main witnesses have been examined, there is no apprehension that if released on bail the petitioner is going to influence the prosecution witnesses. Admittedly, the petitioner is in custody for the last about 04 years. So, in the given circumstances this Court is of the view that no purpose is going to be served by detaining the petitioner in custody for any longer period.

Thus, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing heavy bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

The petitioner is hereby directed not to indulge in any criminal activity in the near future, failing which the prosecution will be at liberty to seek the cancellation of his bail granted in the present case.”

For the sake of brevity, the facts are not reproduced again.

Counsel for the petitioner has also submitted that the petitioner is in custody for the last 04 years, 02 months and 08 days, the injured witness has already been examined and it will take some time in conclusion of the trial and out of 24 PWs, 16 PWs have been examined and the remaining witnesses are yet to be examined. It is also submitted

that the role of the petitioner is identical to that of the co-accused Rahul @ Matouriya, as the primary allegations are against the co-accused Ajay @ Jinder, who gave fatal knife blow to the deceased Kuldeep @ Lovkush.

Counsel for the U.T. Chandigarh, has filed the Custody Certificate and has verified the allegations given in the FIR as well as the custody of the petitioner, however, opposed the prayer for bail.

Though, as per the statement of eye-witness PW-5 and the injured witness PW-8, the petitioner is identified as one of the offender, however, considering the long custody of the petitioner and in view of the fact that both the witnesses i.e. PW-5 and PW-8, have already been examined, without commenting anything on merits of the case and in view of the fact that the petitioner is in long custody for the last 04 years, 02 months and 08 days; the co-accused of the petitioner is already released on bail; the petitioner is not involved in any other case; 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/Illaq 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.

01.12.2022

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Whether speaking/reasoned:

Whether reportable:

(ARVIND SINGH SANGWAN)

JUDGE

Yes/No

Yes/No