

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.1886 of 2023 (O&M)
Date of decision: 07.08.2023

Rakesh and another
.....Petitioners
Versus
State of Haryana
.....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. K.S. Virk, Advocate
for the petitioners.

Mr. Harsh Vardhan Shehrawat, AAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

This is the 2nd petition is for grant of regular bail under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') *qua* petitioner No.1 namely Rakesh and 3rd petition for regular bail *qua* petitioner No.2 namely Rajiv @ Gabbu, in FIR No.07 dated 15.02.2019, for offence punishable under Sections 34, 302, 201 of the Indian Penal Code, 1860 (in short 'IPC') and 25/29 of the Arms Act (Section 202, 212, 216, 120-B IPC) registered at Police Station GRP Jind, District GRP Ambala Cantt.

The earlier one were dismissed as withdrawn.

Counsel for the petitioners has submitted that the new ground for filing this petition is that both the petitioners are in long custody of 03 years, 10 months and 28 days i.e. about 04 years and out of 42 PW, only 13 PWs have been examined and there is no possibility for the petitioners to tamper with the prosecution evidence.

Counsel for the petitioners has relied upon the bail orders of other co-accused, to submit that this yet another ground for grant of bail to the petitioners.

It is worth noticing that the co-accused of the petitioners namely Bhim @ Ankit @ Vivek vide order dated 20.07.2022 passed in CRM-M No.1832 of 2021, has been granted the concession of regular bail and similarly, the other co-accused of the petitioners namely Parveen and Sonu Rathi, have been released on regular bail vide order dated 03.08.2022 passed in CRM-M No.7330 of 2022 and dated 14.11.2022 passed in CRM-M No.36729 of 2022.

The facts as noticed in the order dated 20.07.2022, passed in CRM-M No.1832 of 2021, reads as under:-

“Learned counsel further submits that as per allegations in the FIR, on 15.02.2019, an information was received that a dead body is lying along the railway track. Later on, statement of Bimla, mother of deceased Nitin @ Laddi was recorded, in which she raised a suspicion that his son has been murdered on account of rivalry. Later on, during investigation of the FIR, names of Ankit son of Mohinder and Balinder @ Undar @ Binder son of Gulab Singh were surfaced, who were arrested in another FIR No.157 dated 27.08.2019 under Section 25 of Arms Act, registered at Police Station Pillukhera, District Jind. Their disclosure statement was recorded, in which that they stated that they took Nitin @ Laddi on motorcycle and shot him dead near railway line. Thereafter, both these accused were taken on production warrants and joined the investigation and suffered separate disclosure statements and nominated Rajiv @ Gabhu, Rakesh and Sonu, who gave them Rs.1.50 lacs and they along with another co-

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accused Parveen went to U.P. for purchasing the weapon and ammunition, where they met Bhim @ Ankit @ Vivek (petitioner) and purchased 30 live cartridges from him. On the basis of their further disclosure statement, another co-accused Rakesh, Rajiv @ Gabhu, Sonu Rathee and Parveen were also nominated and on their disclosure statement also, name of the petitioner as supplier of the firearm surfaced.

Learned counsel has referred to disclosure statement of all the accused, to submit that there is no consistency in the said statements. As per disclosure statement of co-accused Balinder Singh Binder @ Andru, co-accused purchased pistol and cartridges from one person namely Gautam and it came that when the co-accused went to U.P., he purchased pistol and 30 live cartridges from Gautam, resident of Village Kheri Pati,, Shamli, U.P. Learned counsel has referred to another disclosure statement of this accused, in which he stated that accused went to U.P. to purchase 06 pistols and 30 bullets from Bhim resident of Bahavari, U.P.

Learned counsel has further referred to disclosure statement of accused Ankit, in which it has come that they purchased the firearms from one Sahil. It is thus submitted that it will be a matter of trial, whether co-accused have purchased the weapons from the petitioner or from some other person, as identity of the petitioner, who has sold the same, is yet to be proved. It is further submitted that there is no allegation that the petitioner was part of the conspiracy or he was present at the spot, when the co-accused committed murder of Nitin @ Laddi. It is also submitted that statement of mother of the deceased has already been recorded, in which no incriminating evidence has come against the petitioner.

Counsel for the petitioners has submitted that even the petitioners' name surfaced during the investigation as a person, who have provided money for the purpose of purchasing the pistol and cartridges, which were used in commission of crime.

Counsel for the State has filed the affidavit of the Deputy Superintendent of Police, Railways Haryana and in Para 13 of the affidavit, the role of both the petitioners is defined. It is also stated that petitioner No.2 Rajiv @ Gabbu's name surfaced in the case as the deceased Nitin @ Laddi was having illicit relationship with one Priyanka, who is daughter of the maternal uncle of petitioner No.2 and petitioner No.2 along with other co-accused, who have been granted bail, hatched a conspiracy to commit the offence and the petitioner gave Rs.1.50 lacs to co-accused Balinder and Ankit, to obtain the fire-arm.

Counsel for the petitioner also argued that the petitioner Ankit has already been granted bail and one of the fire-arm injury is attributed to this accused Ankit.

It is further stated in the affidavit that petitioner No.1 Rakesh was also part of the conspiracy. In para 14 of the affidavit, it is explained that both the petitioners are also involved in some other cases, as well.

However, counsel for the State has not disputed the fact that out of 42 PWs only 13 PWs have been examined so far. It is also not disputed that the prosecution witnesses including the complainant, have already been examined, but opposed the prayer for bail.

Without commenting anything on merits of the case, considering the fact that the petitioners are in custody for the last about

04 years; the co-accused of the petitioners are already released on bail; some of the prosecution witnesses including the complainant stands examined and only the official witnesses remain to be examined, therefore, there is no possibility of tampering with the evidence as well as the fact that the petitioners are in long custody of about 04 years and the conclusion of the trial will take some time, this petition is allowed and both the petitioners are directed to be released on bail subject to their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioners, in case they are found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

07.08.2023
yakub

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No