

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

CRM-M-3450-2023
Date of decision: 26.05.2023

SUKHBIR ALIAS SUKHA

....Petitioner

Versus

STATE OF HARYANA

....Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. D.S. Matya, Advocate
for the petitioner.

Mr. Ram Kumar Singla, D.A.G., Haryana.

HARSH BUNGER, J.

Petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure (*in short "Cr.P.C."*) for grant of regular bail in case FIR No.196 dated 20.05.2021 (Annexure P-1), registered under Sections 120-B, 302 and 201 of the Indian Penal Code, at Police Station DLF Phase-I, Gurugram.

2. Pursuant to the advance copy of petition having been served to learned State counsel, Mr. Ram Kumar Singla, Deputy Advocate General, Haryana, appeared and filed status report by way of an affidavit of Sh. Vikas Kaushik, HPS, Assistant Commissioner of Police, DLF, Gurugram, on behalf of respondent-State of Haryana, which is already on record.

3. Custody certificate dated 20.03.2023 of the petitioner has been filed by learned State Counsel in the Court today, which is taken on record, subject to all just exceptions.

4. Briefly, the above-said case FIR was registered on the complaint of one Vijaypal son of Sh. Birbal, resident of Village Bandhwari, who stated that on 17.05.2021, he along with his son namely, Sandeep alias Kalu (aged around 29 years), was sleeping in their house when around 1:00 a.m. (at night), one Dinesh alias Major son of Ramesh of their village came and called his son Sandeep alias Kalu by raising voice and when his son did not go out for sometime, then Major said that either come with him or he will kill him. It is further stated that on 19.05.2021, he along with his son was present at their home, when around 7:00 p.m. in the evening, one Jagbir son of Partap came to their house and he took his son with him and when he asked his son as to where he was going, then he took Rs.2000/- from him and said that he was going to play cards in the vacant plot of Surajmal. It is stated that when his son did not come back home at night then he made a call to his mobile No.98701-35587; however, his phone was switched off. Thereafter, he searched for his son at the room of Surajmal then he saw that one Parveen son of Maha Singh was coming out from there and when the complainant asked him about his son namely, Sandeep @ Kalu then he (Parveen) asked that he was sleeping in the room. Thereafter, the complainant went to the room to get his son; however, he saw that blood was oozing there and his son was lying in an injured condition with injuries on the back side of his head and on feet, due to which, he died. It is alleged that the mobile phone of the complainant along with Rs.2,000/-, was missing and accordingly, on the basis of suspicion and belief that the petitioner along with others namely, Dinesh alias Major, Parveen, Jagbir and Sunni, was involved in the murder of his son, the above-said case FIR was registered.

5. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the case and he has no role or involvement in the

occurrence as alleged in the FIR. It is submitted that the present petitioner has been nominated as an accused on the basis of disclosure statement of the petitioner himself, which is not admissible. It is further submitted that as per the post-mortem report, deceased Sandeep @ Kalu stated to have died because of the head injury, which is attributed to main accused namely Dinesh @ Dhanesh @ Major. It is submitted that the entire case is based on circumstantial evidence and there is no eye-witness account. It is further submitted that the petitioner is in judicial custody since 09.07.2021 and the investigation is complete; challan has been presented and the charges have been framed. It is submitted that there are total 25 witnesses in the present case, out of them, only 08 witnesses have been examined, including the complainant, who appeared as PW-5 (Vijaypal). It is further submitted that one of the witnesses namely, Surajmal (PW-7) was declared hostile. It is next submitted that the trial is likely to take long time and no useful purpose would be served by keeping the petitioner in custody for indefinite period. Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court, accordingly, prayer for grant of regular bail has been made.

6. Per contra, learned State counsel has opposed the present petition for grant of regular bail to the petitioner on the ground of seriousness and gravity of the offence. Learned State counsel has submitted that after the registration of the above-said case FIR, the investigation and inquest proceedings under Section 174 of the Code of Criminal Procedure, were conducted. The post-mortem of deceased Sandeep @ Kalu was conducted and the parcels of clothes of the deceased worn by him at the time of occurrence, blood samples etc., were handed over by the Medical Officer along with the

post-mortem reports, which were taken into police possession. It is submitted that the petitioner was arrested on 09.07.2021 and he suffered a disclosure statement. It is stated in the status report that Sukhbir @ Sukha (petitioner herein) had suffered an injury on his right leg at the time of the alleged occurrence. His medical examination was got conducted and the blood samples were obtained. He also got recovered the clothes worn by him at the time of the present crime and the amount of Rs.1,000/- of deceased-Sandeep. It is further stated that said Sukhbir alias Sukha had thrown the mobile phone. The other co-accused of the petitioner namely, Parveen, Jagbir and Dinesh @ Dhanesh @ Major were arrested on 20.05.2021 and they suffered disclosure statements and also got demarcated the place of occurrence. While referring to status report, learned State counsel submitted that co-accused Parveen got recovered the clothes worn by him at the time of occurrence and another co-accused namely, Roshan @ Kapil was arrested on 26.05.2021, who also suffered a disclosure statement and got demarcated the place of occurrence. As per the status report, the clothes and blood samples of the deceased were sent to RFSL Bhondsi on 16.07.2021 for examination, whereupon, report dated 03.09.2021 (Annexure R-2) was made. It is also stated that the call records of the mobile phone of the deceased Sandeep @ Kalu and of the phone call made by the accused Sukhbir @ Sukha, were also obtained. The challan is stated to have been filed against the petitioner (Sukhbir @ Sukha) and other co-accused namely, Parveen, Jagbir, Dinesh @ Dhanesh @ Major and Roshan @ Kapil on 13.08.2021 and the charges were framed on 11.03.2022. It is stated that out of total 25 prosecution witnesses, 08 witnesses have been examined and other witnesses are yet to be examined.

7. Learned State counsel has also submitted that the petitioner does not have clear antecedents. It is stated that as per the available record, the petitioner has been found to be involved in the following other cases :-

- i. FIR No.289 dated 03.11.2013, registered under Sections 147, 148, 323, 452, 506 IPC at Police Station DLF Phase-I, Gurugram.*
- ii. FIR No.414 of 2015, registered under Sections 323, 34, 506 IPC at Police Station DLF Phase-I, Gurugram.*
- iii. FIR No.91 dated 17.02.2015, registered under Sections 363, 366-A, 120-B IPC at Police Station Badshahpur, Gurugram.*
- iv. FIR No.103 dated 27.03.2014, registered under Section 354 of the Indian Penal Code, at Police Station DLF Phase-I, Gurugram.*

8. Learned State counsel has submitted that the petitioner is involved in heinous offence of murder and he is not entitled to the concession of regular bail. It is submitted that in case, the petitioner is enlarged on regular bail then he may tamper with the evidence and influence the material witnesses or he may abscond and flee from justice which may delay the trial; accordingly, prayer for dismissal of the petition has been made.

9. I have heard learned counsel for the parties and perused the paper book as well as the status report and custody certificate of petitioner filed by learned State counsel.

10. Instant case relates to the murder of Sandeep @ Kalu, who was 29 years of age, which is a serious and heinous offence.

11. So far as the submission of learned counsel for the petitioner that there is no material/evidence to connect the petitioner with the alleged crime is concerned; suffice it to say that while considering the prayer for regular bail, the Court is not required to conduct a mini trial. In any criminal case, the

witnesses are the eyes and ears of justice. But the testimony of the witnesses is not always credible and therefore the facts are provable not only by witnesses but also by circumstances. Circumstantial evidence matters more as the circumstances never lie. The evidence placed on the file would be considered by the trial Court at the appropriate stage.

12. Still further, although the petitioner has been in custody since 20.05.2021; however, in my considered opinion, the petitioner cannot be released on bail solely on the basis of long incarceration in jail or on the ground that the trial is not likely to be concluded in near future; especially when the petitioner is being tried for a serious and heinous offence of murder of son of the complainant namely, Sandeep @ Kalu. In ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav, 2004(2) RCR (Criminal) 254***, Hon'ble Apex Court held as under:

"The condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to be enlarged on bail, nor the fact that the trial is not likely to be concluded, in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence

alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

13. As regards the submission of the counsel for the petitioner that PW7-Surajmal has turned hostile; suffice it to say that even in cases, where the witnesses turned hostile, in those cases also, it is to be considered by the Court in each case whether under the circumstances, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. Moreover, the apprehension expressed by the State counsel that if released on bail, there is every likelihood of the petitioner trying to tamper with the prosecution evidence by giving threats and inducement to the prosecution witnesses and absconding even to prolong the trial, cannot be brushed aside lightly.

14. Keeping in view the gravity and seriousness of offence and also the likelihood of petitioner tampering with the prosecution evidence and even absconding, no ground for grant of regular bail to the petitioner is made out. However, the trial Court is directed to expedite the trial.

15. Nothing stated here-in-above shall be construed as an 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.

16. All pending application/s, if any, shall also stand disposed of.

May 26th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No