

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

278

**CRM-M-9114-2023
Date of decision: 28.02.2023**

NARENDER

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Ram Pal Verma, Advocate
for the petitioner.

Mr. Vivek Chauhan, Addl. A.G. Haryana.

VINOD S. BHARDWAJ, J. (Oral)

This is a second petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No. 96 dated 30.12.2005 registered under Sections 302, 34 of the Indian Penal Code, 1860 and Section 25 of the Arms Act at Police Station Linepar, Bahadurgarh, District Jhajjar.

2. Briefly summarized the facts of the present case registered at the instance of complainant on statement of Dharampal son of Kalia resident of village Bupaniya Jhajjar is that Kismat @ Kala son of Baharmanand, the brother-in-law of his son Prem was constructing house at his plot in Patel Nagar, Bahadurgarh. The complainant had come to the plot where Surender @ Nitu son of Zile Singh also come present and requested them to accompanying them to village Brahai for a compromise. The complainant alongwith Surender @ Nitu & Kismant came to the office of Ravi Khatri, Draftsman in a Santro car from where alongwith 4-5 friends of Ravi Khatri went for negotiating a settlement with regards to dispute that arose at the Tripat factory. When they were

coming back to Bahadurgardh from Barahi at about 3:15 p.m. and were about to sit in their Santro Car near the house of Pawan Sarpanch then Krishan @ Kala, Rajesh and Narender son of Tej Singh (present petitioner) alongwith Sanjay @ Lafander surrounded Kismat. Krishan @ Kala fired upon Kismat for giving beatings to him while in Rohtak Jail and Kismat should not be allowed to escape alive. The 2nd fired by Rajesh son of Tej Singh which went post Zen Car. Thereafter, they pulled down Kismat and then Krishan @ Kala shot at the forehead of the Kismat from his country made pistol resulting in death of Kismat.

3. Counsel for the petitioner contends that the petitioner is alleged to have pelted stone on the Santro Car in order to stop the same. He submits that the death in question had taken place as a result of the shots of gun fire attributed to Rajesh son of Tej Singh and Krishan @ Kala. It is contended that even though the incident in question is stated to have taken place in the month of December, 2005, however, the petitioner was never sought as an accused in the present case. He refers to the final report submitted by the police wherein it is reflected that only the proceedings under Section 82 Cr.P.C. had been initiated and no order was passed by any competent Court. He submits that no recovery had been effected from the petitioner and that he is now being prosecuted in the above said case. He further submits that the eye-witness of the incident namely Rajesh has already deposed in the ongoing proceedings and he has not supported the prosecution version against the petitioner. The other two eye-witnesses cited by the police have already passed away and as such, there is no remaining eye-witness who would depose qua the presence of the petitioner at the

place of incident or his participation in the offence. It is argued that allegation against petitioner is that he pelted stone to shop the Car where as case of complainant itself is that they were about to sit in the Car. Hence there was no occasion to stop the Car when it was not even started. He further contend that the petitioner has already undergone an actual custody of 01 year and 07 months and that he has clean antecedents and is not required in any other case.

4. Per contra, learned counsel appearing on behalf of the respondent-State submits that the co-accused namely Krishan @ Kala and Rajesh, who are attributed of firing of the shots, have already been convicted by the trial Court and that their appeals are pending. He further submits that trial qua the petitioner remained pending due to absence of the petitioner himself and his failure to appear before the trial Court.

5. He, however, could not refer to any evidence on the basis whereof it could be inferred that the petitioner was originally charged by the Investigating Agency or that he had absconded. In the absence of any such allegation in the proceedings, it cannot be presumed that the petitioner absented from the proceeding.

6. The incident in question is of the year 2005 wherein the other accused have been convicted and the proceedings qua the petitioner commenced only in the year 2021. There is nothing on record to suggest that the petitioner was involved in any other criminal offence either prior to his nomination in the instant case or after the registration of the present case despite his co-accused having been convicted. The antecedents of the petitioner are clean and the eye-witness cited by the

prosecution to prove the presence of the petitioner at the place of occurrence has not supported the case of the prosecution. The other witnesses are stated to have died.

7. I have heard learned counsel appearing on behalf of the respective parties and have gone through the record with their able assistance.

8. Taking into consideration the circumstances noticed above, the actual period of custody, the clean antecedents of the petitioner, the role attributed to the petitioner, the stage of trial and also absence of any recovery, I deem it appropriate to enlarge the petitioner on bail upon furnishing bail bonds/surety bonds to the satisfaction of the Trial Court.

9. The instant petition is allowed and the petitioner is ordered to be released on bail on his furnishing the requisite bail bond/surety to the satisfaction of the Trial Court/Duty Magistrate concerned.

10. It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

11. The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of the material available.

The petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

FEBRUARY 28, 2023

Vishal sharma

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