

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

CRM-M-8412-2023

Date of Decision: 22.02.2023

Vinay

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sunny Tyagi, Advocate, for the petitioner.

Mr. Kirpal Singh Thakur, Asstt. Advocate General, Haryana.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.1036 dated 28.10.2019, registered under Sections 302, 34 IPC and Sections 25, 54, 59 of Arms Act, 1959 at Police Station Chandni Bagh, District Panipat.

Adumbrated facts of the case are that the complaint was lodged by Jhagma w/o Aimplal, wherein it was alleged that she belonged to Nepal and was residing at Panipat from the last 14 years. On the intervening night of 27/28.10.2019, there was a scuffle between her *Dever* Bhim and one boy namely Sameer. Her husband intervened and separated both of them. However, thereafter Sameer's friend namely, Vinay (petitioner) came there and attacked her husband and gave several blows of knife on his stomach, chest and neck. After giving injuries, both Sameer and Vinay fled away from the spot and thereafter, her husband rushed to hospital, where the Doctor declared him brought dead. Request was made to take legal action against the culprits. On the statement made by the complainant, a formal FIR was registered and the investigation commenced. The Investigating Agency recorded the statement of the witnesses in accordance with the

provisions of Cr.P.C. and conducted inquest report and the postmortem of the deceased was conducted. The petitioner was arrested on 28.10.2019. He approached the Court of learned Addl. Sessions Judge, Panipat for grant of bail, who, after hearing the parties, declined the same vide order dated 27.01.2023 Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition for grant of bail.

It has been contended by learned counsel for the petitioner that the petitioner has been falsely implicated in the present case. He submits that the allegations against the petitioner have been made by the complainant who is wife of the deceased. He submits that another eye witness produced by the prosecution is Bhim i.e. the brother of the deceased. He submits that wife and brother of the deceased had been examined by the trial court as PW-11 and PW-12, respectively. He submits that material eye witnesses of the occurrence have not supported the case of the prosecution and thus, on the request of the learned Public Prosecutor have been declared hostile by the trial Court. He further submits that the weapon of offence i.e. knife was recovered from the co-accused and not from the petitioner. He submits that even from FSL report received, complicity of the petitioner is not established. He submits that once the eye witnesses and the corroborating evidence do not inspire confidence, the case of the prosecution is totally without any evidence and hence, the petitioner who is behind the bars from the last more than 3 years, deserves to be granted bail. He submits that the petitioner has no criminal antecedents as he has never been involved in any other criminal case.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner and has submitted

that the case of the prosecution is based on eye witnesses account. He submits that though both the eye witnesses have not supported the case of the prosecution and have been declared hostile by the trial Court, however, as per the established position of the law, the complete deposition of a hostile witness cannot be rejected and the relevant portion of his deposition can always be relied upon. He further submits that as per FSL report, complicity of the petitioner is established. However, he submits that as per the instructions from ASI Raj Kumar, the petitioner is not involved in any other case. He submits that in all there are 16 prosecution witnesses, out of which 14 witnesses including the eye witnesses and the Doctor have already been examined. He has placed on record the custody certificate of the petitioner, which would show that he is behind bars from the last 3 years 3 months and 22 days.

Heard.

Needless to say that the petitioner is behind bars since 28.10.2019. As submitted before this Court, both the eye witnesses i.e. the wife and the brother of the deceased, as per their deposition have not supported the case of the prosecution and were declared hostile. A perusal of their deposition show that it has been deposed before the trial Court that the petitioner was not the person, who caused injuries to the deceased. There is nothing on record to show that the petitioner has any criminal antecedent. Veracity of the allegations is to be assessed by the learned trial Court on the basis of evidence to be led by both the parties before it. This Court would refrain itself from commenting anything on the merits of the case, however, considering the prayer for grant of bail to the petitioner, I am of the view that learned counsel for the petitioner has been able to make out

a case for grant of regular bail to the petitioner. The trial would take sufficiently long time for its conclusion.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail subject to the satisfaction of the concerned trial Court/Duty Magistrate.

Nothing said herein shall be treated as an expression of opinion on the merits of the case.

22.02.2023			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No