

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-9298-2023
Date of decision: 04.07.2023

Gurdeep alias Gabbu ...Petitioner
VS
State of Haryana ...Respondent

CORAM: HON'BLE MR.JUSTICE ARUN MONGA

Present: Mr. Sandeep Lather, Advocate,
For the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

ARUN MONGA, J. (ORAL)

Status report along with custody certificate of petitioner has been tendered in course of hearing, which is taken on record.

2. Aggrieved on being declined bail by learned trial Court, petitioner before this Court, seeks his release as an undertrial in criminal case bearing FIR No.219 dated 16.09.2020, registered under Sections 302,307,147,148 and 120-B of the Indian Penal Code, 1860 and Sections 25 and 29 of the Arms Act, 1959 at Police Station Bass, District Hisar.

3. Per FIR, complainant Akshay, brother of the deceased-Aman alleges that on 16.09.2020, at about 11:15 a.m. when he and his brother-Aman were right outside their house, accused Gurdeep @ Gabbu (petitioner), Deepak, Bhagat and Ram Bhaj, armed with weapons, came there and fired gun shots on them. The complainant saved himself by running inside the house. Whereas, his brother-Aman got hit with a gun shot in his stomach and all the assailants thereafter decamped with their weapons.

Brother of the complaint later succumbed to the fatal gun-shot.

4. Learned counsel for the petitioner submits that petitioner has been falsely implicated in the case. No specific role has been attributed to the petitioner. Co-accused Manjit, Bhagat Singh and Rambhaj, who were also named in the FIR as assailants, have been declared innocent by the Investigating Agency.

4.1. Learned counsel for the petitioner strenuously argues that case of the prosecution in view of testimony of complainant himself, as well as, that of the eye witnesses collapses like a pack of cards. He submits that not only the complainant has resiled before the Court from supporting his original version contained in the complaint, which led to the registration of FIR, but he has gone to the extent of deposing that he never filed/signed any complaint before the Police.

4.2. Furthermore, counsel points out that even the eyewitnesses, who are the star prosecution witnesses, namely, Ranbir Singh and Ashok on whose statements, the petitioner was named as prime accused, allegedly having fired a gunshot, have also turned hostile. They have stated on oath before learned trial Court that neither of them stated before the police officials that they had seen the petitioner firing gunshot which resulted in death of deceased Aman.

5. On being confronted with the aforesaid, learned State counsel is not readily able to respond to the same for lack of instructions, since his instructing police official is not present in Court. However, he submits that as per status report, country made pistol along with one live cartridge and motorcycle Splendor Plus were recovered from the present petitioner. He also states that apart from this, another FIR bearing No.38 dated 30.01.2020 under Sections 323, 427, 452, 506, 148/149 of IPC, 25 Arms Act, 1959 and

SC/ST Act was also registered against the petitioner and said case is fixed for prosecution evidence.

6. *Apropos*, my attention has been drawn to an order dated 13.01.2023 (Annexure P-5) passed by a Coordinate Bench of this Court, wherein one of the co-accused involved in the same very FIR, has already been granted bail. Perusal of the said order reveals that it was on the basis of the aforesaid eye witnesses having turned hostile that the concession of bail pending trial was granted.

7. Petitioner is in custody since 23.10.2020. Investigation is complete. Challan has been presented. Charges have been framed. Out of 30 witnesses, only 10 have been examined and 20 witnesses are yet to be examined. Trial is still likely to take long time, whereas petitioner has already been languishing in jail for the past two years and five months in preventive custody. As per custody certificate, petitioner is on bail in other FIR No.38 dated 30.01.2020.

8. Considering the overall scenario, particularly the complainant and the two eyewitnesses having not supported the prosecution version, but at the same time, without commenting on merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep petitioner in further preventive custody.

9. Accordingly, petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where his case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

10. In case, petitioner is found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.

11. It is made clear that any observations made hereinabove shall not have any effect on merits the case as the same are for the limited purpose of bail hearing alone and learned trial Court shall proceed without being influenced with this order.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

04.07.2023
Vandana

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