

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

CRM-M-9404-2023
Date of decision: 02.06.2023

SUMIT

....Petitioner

Versus

STATE OF HARYANA

....Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr.Vinay Singh Rathee, Advocate
for the petitioner.

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

HARSH BUNGER, J.

Prayer in this petition is for grant of regular bail to the petitioner in case FIR No. 471 dated 15.12.2019 (Annexure P-1) registered under Sections 302, 506, 148, 149, 120-B of the Indian Penal Code (for short 'the IPC') and Sections 25 and 27 of the Arms Act, at Police Station Rai, District Sonipat (charges framed under Section 302/34 IPC and Sections 25, 27 and 29 of the Arms Act).

2. Status report dated 14.04.2023 filed by way of an affidavit of Sh. Vipin Kadian, HPS, Assistant Commissioner of Police, Rai, Sonipat, on behalf of respondent/State of Haryana has been filed, which is already on record.

3. Custody certificate dated 22.04.2023, of the petitioner has been filed by learned State counsel, which has been taken on record vide order dated 24.04.2023.

4. Succinctly, the above said case FIR has been registered on the statement of one Sant Kumar son of Shayam Singh, who stated that on 15.12.2019 at about 10:50 A.M., he and his brother (Rajkumar) were leaving for their fields, when accused(s) namely Sumit s/o Dharmender, Praveen s/o Bijender, Narender @ Apple s/o Ramehar, Joginder s/o Ramehar and Kranti s/o Maha Singh; armed with weapons, ambushed them. Rajkumar, brother of complainant, who was walking a few steps ahead of the complainant was caught by the said accused(s) and Sumit s/o Dharmender, armed with a pistol, shot Rajkumar directly in the chest with an intention to kill him. The accused(s) named, rode away on their scooty and motorcycle and further threatened the complainant and his family not to speak of the incident. The brother of the complainant was taken to FIMS Hospital, Sonipat where he succumbed to his injuries. As per the complainant, the accused(s) persons had dispute with his family about 1½ years ago regarding land which was later compromised in Panchayat; however, the accused(s) nurtured a grudge and shot Rajkumar (brother of the complainant). Accordingly, the instant case FIR was registered.

5. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and the alleged recovery is foisted upon him. It is submitted that a perusal of the FIR would show that the complainant has implicated whole of the family of the petitioner, who were exonerated during investigation, thus challan was not filed against them. It is stated that the petitioner has been in custody since 17.12.2019; challan stands presented on 26.2.2020 and even charges have been framed on 10.3.2021; which were altered/reframed against petitioner vide order dated 04.06.2022 and Section 506 IPC was added. Learned counsel next

submits that there are total 21 witnesses and till date no witness has been examined, thus, the trial would take some time. It is stated 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 is made.

6. Learned State counsel opposed the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of offence. He submitted that accused-petitioner (Sumit) has been specifically named in the FIR and is the kingpin of the offence. It is further submitted that the petitioner after nursing a grudge against the deceased Rajkumar, shot him and further threatened the family members of the deceased. Learned State counsel submitted that these facts have been admitted by the accused-petitioner (Sumit) in his disclosure statement which led to the recovery of country made pistol, used in the commission of the crime. Learned State counsel submitted that as per the FSL, the empty cartridge recovered from the place of occurrence and bullet retrieved from the body of the deceased, were found to have been fired from the country made pistol recovered from the petitioner (Sumit). Learned State counsel has submitted that the petitioner is involved in heinous offence of murder and is not entitled to the concession of regular bail. It is submitted that the petitioner is involved in another case, FIR No. 523 dated 7.11.2017 under Sections 366A/376 IPC registered at Police Station Rai, Sonipat. It is next 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.

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

8. The instant case FIR has been registered on the complaint of Sant Kumar of Village Khewda, alleging therein that his brother Raj Kumar, who was walking ahead of him on the fateful day, was murdered by petitioner-Sumit, by giving a direct shot from a pistol in the chest of the deceased Raj Kumar with an intention to kill, who later succumbed to his injuries. The motive is stated to be a land dispute between the accused persons and the family of the complainant. As per the status report, the petitioner was arrested in this case; whereupon, he suffered a disclosure statement admitting his guilt and also admitted regarding the property dispute between the parties. The petitioner is stated to have disclosed that he fired gun shot at Raj Kumar with a countrymade pistol, provided to him by one Sahil and the petitioner is further stated to have got recovered the said countrymade pistol used in committing the crime alongwith one live cartridge and further demarcated the place of occurrence. As per status report, FSL report has been received from Forensic Science Laboratory, Madhuban; wherein, it has been opined that the empty cartridge recovered from the place of occurrence and the bullet retrieved from the body of the deceased, were found to have been fired from the countrymade pistol, which was got recovered by the petitioner and the hole on the cloth of the deceased, was also found to have been caused by firearm projectile. The petitioner has been named in the FIR and had actively participated in the commission of offence, which is serious, grave and heinous offence. Although, the petitioner is in custody since 20.12.2019 and the prosecution

witnesses are yet to be examined; 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 brother of the complainant. 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."

9. As per the settled position of law, gravity and seriousness of the offence is a relevant consideration for the purpose of grant of bail. Further, the Hon'ble Apex Court in ***Neeru Yadav vs State of Uttar Pradesh 2014(16)***

SCC 508, observed as under :-

“A society expects responsibility and accountability from its members, and it desire that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious matter ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At this stage, the court has duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.”

10. Concededly, the trial in this case is undergoing. The guilt of the accused shall be determined during the trial. 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. Further, a perusal of the custody certificate dated 22.04.2023 reveals that the petitioner does not have clear antecedents inasmuch as when he is involved in another case FIR No.523 dated 07.11.2017, under Sections 363 and 366-A IPC registered under Section Rai, Sonipat.

11. 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. The present petition is accordingly dismissed. However, the trial Court is directed to expedite the trial.

12. 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.

13. Pending application/s, if any, shall also stand disposed of.

June 2nd, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No