

CRM-M-9921-2023

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**  
**217**

Date of decision: 12.09.2023

**1. CRM-M-9921-2023**

Monu @ Aryan

....Petitioner

V/s

State of Haryana

....Respondent

**2. CRM-M-11767-2023**

Naseeb

....Petitioner

V/s

State of Haryana

....Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

Present: Mr. Ankit Chahal, Advocate for the petitioner(s).

Mr. Vikas Bhardwaj, AAG Haryana.

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**ARUN MONGA, J. (Oral)**

Vide this common order above mentioned two bail petitions arising out of the same FIR are being disposed of. For brevity, recitals/facts are from CRM-M-9921-2023.

2. After being declined bail by learned trial Court, petitioners before this Court seeks their release as undertrials in case bearing FIR No.39 dated 04.02.2019 registered under Section 365, (Sections 120-B, 201, 302 and 148 read with Section 149 IPC and Section 25 of Arms Act, 1959, added later on) at Police Station, Rohtak, Civil Lines, District Rohtak, Haryana.

3. Per prosecution, on 01.02.2019, Harish, now deceased, was forcibly taken away in a white Mahindra Scorpio vehicle. Subsequently, his body was discovered in Delhi. The inquiry revealed that the aforementioned vehicle was registered under the name of Parveen, the son of Harpal. During investigation, it was also discovered that accused Parveen had a money dispute with his uncle Harish (deceased). Parveen along with its associates were found in abducting Harish (deceased). It was also investigated that one Rajwanti w/o Harpal had

**CRM-M-9921-2023**

lodge a case against deceased-Harish and it was found that she was residing with deceased Harish for the last many years. On 03.02.2019, Delhi police found dead body of one unknown person and a case was registered in this regard. Later investigating officer along with family members of deceased-Harish approached the Police Station Kanjhawala, who identified the unknown dead body to be of Harish. Further investigative efforts, aided by CCTV footage and statements from witnesses Anju and Anil, resulted in the apprehension of one Lokesh and Aman. During their questioning, Lokesh informed the police that the petitioners herein were responsible for abducting Harish and ultimately causing his demise by gunshot. Consequently, the petitioners were arrested and are currently facing charges related to the kidnapping and murder of the deceased.

4. Learned counsel for the petitioners contends that all material witnesses have been examined. The alleged eye witnesses-PW-2-Anju and PW-3-Anil have not supported the prosecution case and have turned hostile. Similarly, PW-4 Deepak and PW-5 Jagdish, who were the nephew and brother of deceased have also given a clean chit to the petitioners.

4.1 Learned counsel for the petitioners further submits that names of petitioners surfaced on the basis of alleged disclosure suffered by petitioners in police custody. Such a custodial statement obtained under coercion is not admissible in court. He further submits that entire investigation has now already been completed. He further submits that all the material independent witnesses of the prosecution including eye witness/informer stand examined as PW-2 to PW-6 and none of them have supported the case of prosecution. Even during identification parade, petitioners have not been identified as one of the accused.

4.2 Further submits that co-accused Aman and Pawan to whom similar role has been attributed, have already been granted the concession of regular bail

CRM-M-9921-2023

by coordinate Bench and learned Additional Sessions Judge, Rohtak, contained at Annexures P-3 and P-4.

4.3 Learned counsel further submits that there is no iota of evidence against the petitioners and they have no concern with any of the co-accused in any manner. Nothing is to be recovered from petitioners and, thus, no useful purpose would be served by keeping them behind bars.

5. Per contra, learned State counsel, on instructions from SI Suresh Kumar, opposes the bail petitions. He contends that petitioners have abducted and murdered the deceased. He further points out that petitioners are involved in other criminal cases also. In case, petitioners are granted concession of bail, there are chances of their fleeing from justice.

6. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

7. On an earlier occasion, a coordinate Bench seized of the matter passed an order dated 04.05.2023, being *apposite*, same is reproduced herein below:

“1. Through the present petition filed under Section 439 Cr.P.C. the petitioner seeks regular bail in FIR No.39 dated 04.02.2019 registered under Section 365 IPC (Sections 148, 149, 201, 302, 120-B IPC and Section 25 of the Arms Act, 1959 added later on) at Police Station Rohtak Civil Lines, District Rohtak.

2. Briefly stated, the case of the prosecution is that on 01.02.2019 Harish (hereinafter referred to as the deceased) was abducted in a white Mahindra Scorpio car; later, his dead body was found in Delhi; investigations revealed that the said car was registered in the name of Parveen son of Harpal; further investigations conducted with the aid of CCTV footage and eyewitnesses' accounts given by Anju and Anil led to the arrest of Lokesh and Aman; on being interrogated Lokesh stated before the police that the petitioner and Monu @ Aryan were the ones who had abducted and later on shot dead the deceased and on the afore basis the petitioner was arrested and is being prosecuted for kidnapping and murder of the deceased.

3. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in this case; the petitioner is in custody since 27.05.2019; all material witnesses in the petitioner's trial have since been examined; the alleged eye witnesses-PW-2 Anju and PW-3 Anil, while appearing before the trial court, have not supported the prosecution's case; similarly PW-4 Deepak and PW-5 Jagdish, who were the nephew and

CRM-M-9921-2023

brother of the deceased, have also given a clean chit to the petitioner; the only evidence remaining with the State against the petitioner is the alleged disclosure statement of co-accused Lokesh which has no evidentiary value; there is no forensic evidence with the State to link the petitioner with the murder of the deceased; in the alleged CCTV footage PW-5 Jagdish had allegedly stated before the police that Parveen and Aman were the persons who were seen abducting the deceased before his murder; while appearing before the trial court PW-5 has not supported the prosecution's case; co-accused Aman, who had earlier approached this Court through CRM-M-14896-2021 Aman vs. State of Haryana has already been granted regular bail by this Court and that since 45 prosecution witnesses still remain to be examined in the petitioner's trial, the same shall take a long time to conclude.

4. Learned State counsel opposes the grant of bail to the petitioner on the ground that the petitioner and his co-accused have abducted and murdered the deceased and that the petitioner has also other criminal cases pending against him which includes one case under Section 302 IPC.

5. Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

6. The effect of the alleged eye witnesses and the other independent witnesses having not supported the prosecution's case as also the lack of forensic evidence with the State to prosecute the petitioner would be debated during the course of the petitioner's trial. However, on one hand the petitioner has been in custody for the last nearly 04 years; all material witnesses in his trial stand examined and 45 prosecution witnesses still remain to be produced in the petitioner's trial whereas on the other hand the petitioner faces four other criminal cases which includes one case under Section 302 IPC.

7. After considering the totality of the above facts, while adjourning the present petition to 12.09.2023, it is considered just and appropriate to direct that subject to the satisfaction of the CJM/Duty Magistrate, Rohtak, who shall insist upon heavy local sureties, the petitioner be released on interim bail till 04.09.2023.

8. It is clarified that on the adjourned date, subject to the petitioner's surrender, further orders in the present petition would be passed on its merits after considering the conduct of the petitioner and progress in his trial.

9. It is further directed that while on bail the petitioner shall own and possess a smart mobile phone which shall be kept on at all times; the phone shall always be with the petitioner; he shall share the number of the phone as also his location with the SHO of the area where the petitioner normally resides; he shall mark his attendance on the 1st of each month in the concerned police station and that he shall also not leave the jurisdiction of the concerned police station without the prior permission of the SHO of such police station.

8. *Apropos,* petitioner-Naseebwas released on interim bail on 24.05.2023 and he surrendered on 04.09.2023 while petitioner-Monu @ Aryan was also ordered to be released on interim bail but it transpires that he could not be

**CRM-M-9921-2023**

released despite the order of interim bail since his custody was required in another FIR.

9. Be that as it may, on a Court query, eyewitness as well as complainant turning hostile and not supporting the prosecution version is not controverted by the learned State counsel.

10. Learned State counsel, on instructions from SI Suresh, submits that challan was presented and charges were framed way back on 26.07.2021. Investigation is complete, petitioners are thus not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against petitioners are a matter of trial at this stage. Trial has commenced and out of total 50 witnesses, 06 have been examined so far. Conclusion of trial is still likely to take long time as it is proceeding at a snail pace. Whereas, petitioner Monu alias Aryan has already been languishing in jail for the last more than 03 years and 11 months, being in custody since 27.05.2019 while petitioner Naseeb remained in jail for more than 4 years.

11. Petitioners are being kept in preventive custody merely on an unfounded suspicion that if they are let out, they may either tamper with evidence and/or influence witnesses. There is no probability of tampering with evidence as the same has already been seized by the investigating agency.

12. It is stated that petitioners are 27 and 29-year old respectively. Being family persons and having fixed abode, it is unlikely that petitioners pose a flight risk and/or will flee from trial proceedings.

13. Considering the overall scenario and without commenting on merits of the case, the instant petitions are allowed. I am of the view that no useful purpose would be served to keep petitioners in further preventive custody in instant case.

CRM-M-9921-2023

14. Accordingly, petitioners are ordered to be released on bail, in case not required in any other case, on their furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where their case are being tried and in case he/she is not available, before learned Duty Judge, as the case may be.
15. In case, petitioners are found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of their bail in the instant case.
16. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits the case as the same are for the limited purpose of hearing the instant bail petitions alone and learned trial Court shall proceed without being influenced with this order.
17. Pending application(s), if any, shall also stand disposed of.
18. A photocopy of the order be placed on the file of the connected case.

(ARUN MONGA)  
JUDGE

September 12, 2023  
*Ajay*

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