

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

103+208

**CRM-10415-2023 in/and
CRM-M-10149-2023
Date of decision: 10.03.2023**

Mohit @ Mauji

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sanpreet Sandhu, Advocate
for the petitioner.

Mr. Rahul Mohan, DAG, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

CRM-10415-2023

For the reasons mentioned in the application, the same is allowed and copies of examination-in-chief and cross-examination of the complainant and eye witness dated 12.11.2021 are taken on record as Annexures P-6 and P-7 respectively subject to all just exceptions.

CRM-M-10149-2023

The petitioner is seeking the concession of bail under Section 439 of the Code of Criminal Procedure, 1973 in case FIR No.119 dated 14.03.2019 lodged under Sections 148, 149, 302, 506, 120-B and 216 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959 registered at Police Station Rai, District Sonipat.

Learned counsel appearing for the petitioner *inter alia* contends that a perusal of the FIR in question (Annexure P-1) reveals that the petitioner was not named in the FIR in question which was registered at the instance of the brother of the deceased. He submits that

the name of the petitioner was nominated as an accused on the basis of a disclosure statement allegedly made by co-accused Suraj who had been named in the FIR in question. Learned counsel further contends that the false implication of the petitioner in the crime in question finds credence from the fact that two both the material witnesses i.e. the complainant (brother of the deceased) as well as another eye witness Ajit Singh while stepping into the witness box failed to support the case of the prosecution as a result of which they were declared hostile. In support, learned counsel has drawn the attention of this Court to the deposition of both these material witnesses which have been annexed as Annexures P-6 and P-7. Learned counsel thus submits that in the circumstances further incarceration of the petitioner, who has now been in custody since 20.03.2019 would serve no useful purpose moreso when only 23 out of the 81 prosecution witnesses had been examined till now. It has also been submitted that all the other accused including the main accused Suraj, who was named in the FIR in question have already been extended the concession of bail by this Court.

Per contra, learned counsel appearing for the State while opposing the prayer made by the counsel opposite, on instructions has not been able to dispute the submissions made by the counsel opposite that both the material witnesses i.e. the complainant and eye witness Ajit Singh failed to support the case of the prosecution and as a result of which they were declared hostile. Learned State counsel, however, submits that the petitioner accompanied Suraj and two others at the time of the occurrence in question and fired from their respective firm

arms at Narinder since deceased which proved to be fatal. Still further, the fire arm used in the crime in question was lateron recovered from the petitioner pursuant to his disclosure statement.

On a pointed query put to the learned State counsel as to whether any test identification parade of the accused was carried out, he, on instructions replied in the negative.

I have heard learned counsel for the parties and perused the material placed on record.

In the facts and circumstances as enumerated hereinabove, since only 23 prosecution witnesses out of the 81 cited stand examined coupled with the fact that both the material witnesses have failed to support the case of the prosecution, this Court deems it appropriate to extend the concession of bail to the petitioner who has been in custody since 20.03.2019, as the trial shall take considerable time to conclude.

Accordingly, the instant petition is allowed. The petitioner be admitted to bail to the satisfaction of the Trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

10.03.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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