

CRM-34782-2023 in/and
CRM-M-10677-2023

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(117+224)
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-34782-2023 in/and
CRM-M-10677-2023
Date of Decision: 21.08.2023

DINESH

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Anshumaan Dalal, Advocate
for the petitioner.

Mr. Neeraj Poswal, Asst. A.G., Haryana.

Mr. S.K. Verma, Advocate
for the complainant.

JASJIT SINGH BEDI, J.

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The present application has been filed by the applicant-petitioner for placing on record the copy of disclosure statement of co-accused namely, Rahul @ Chunu as Annexure A-4 and copy of order dated 21.03.2023 passed this Court.

For the reasons mentioned in the application, the same is allowed and the copy of disclosure statement of co-accused namely, Rahul @ Chunu as Annexure A-4 and copy of order dated 21.03.2023 are taken on record.

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The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.166 dated 20.11.2021 registered under Sections 120-B, 212, 341, 302 IPC read with Section 34 IPC and Section 25 of the Arms Act at Police Station Mohana, District Sonipat.

2. The present FIR came to be registered at the instance of Sarita wife of Shamsher Singh who stated that her husband had expired and she had one son by the name of Atender alias Chunu aged 31 years who was into the business of property dealing. On 20.11.2021 her son Atender had gone to his office in Gohana and before going had told her (complainant) that Dinesh (petitioner) resident of Mudlana wanted to kill him (Atender-deceased) and along with Dinesh, Sandeep alias Kana resident of Gurnad was trying to kill him (deceased). At about 06.15 PM in the evening while her son was coming back from his office, then 3-4 boys came in a car with weapons in their hands and opened fire on Atender-deceased. 4-5 bullets had struck her son and Sandeep alias Choti who had reached at the spot had taken her son Atender to Mohana Hospital where he was administered first-aid. He was subsequently admitted at PGI Kahnpur where, he had died. Dinesh Mudlana, Mukesh Kera, Seeta, Uma, Ankit, Sandeep Kana and Gumand had altogether murdered her son. Legal action was sought.

During the course of investigation, it transpired that Mohit was the driver of the vehicle in question and the shooters were Rahul and Parveen. The petitioner was nominated as an accused with the aid of Section 120-B IPC whereas the other persons named in the FIR were exonerated.

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3. The learned counsel for the petitioner contends that PW1-Sandeep Choti who was an eye-witness to the occurrence has not supported the prosecution case and has turned hostile. PW2-Sunny who accompanied the deceased to the hospital along with Sandeep had also turned hostile. The statement of Sarita would amount to hearsay evidence at best and therefore, in the absence of any admissible evidence whatsoever, the petitioner was entitled to the concession of bail. In fact, the deceased was a history-sheeter with 12 other cases registered against him. Even otherwise, the petitioner was in custody since 07.01.2022 and only 14 out of the 26 prosecution witnesses had been examined so far and therefore, the trial of the present was not likely to be concluded anytime soon entitling the petitioner to the grant of bail. Further, in the one other case pending against the petitioner bearing FIR No.437 dated 29.10.2021 under Sections 120-B, 302, 411, 34 IPC and 25 of Arms Act Police Station City Jhajjar, the petitioner had been granted the concession of bail vide order dated 18.05.2023.

4. On the other hand, the learned State contends that the petitioner was the main accused. The statement of Sarita was categorical to the effect that the deceased had told her on the date of the occurrence that the petitioner along with his co-accused would commit his (deceased's murder). This was sufficient evidence to inculcate the petitioner. He, however, concedes that the petitioner was in custody since 07.01.2022, only 14 out of the 26 prosecution witnesses have been examined so far and the material witnesses have turned hostile.

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5. The learned counsel for the complainant has vehemently opposed the bail application. He contends that the petitioner was not entitled to the concession of bail as he was a habitual offender with multiple cases registered against him. He, however, concedes that in all but two of the cases registered against the petitioner, he has been acquitted as also the fact that the deceased himself was a history-sheeter.

6. I have heard the learned counsel for the parties.

7. Admittedly, the material prosecution witnesses have been examined and have not supported the prosecution case. Whether the remaining evidence would be sufficient to affix liability upon the petitioner shall be adjudicated upon during the course of the trial. The petitioner is in custody since 07.01.2022 and only 14 prosecution witnesses out of the 26 stand examined. Therefore, the trial of the present case is not likely to be concluded anytime soon. In this view of the matter, the further incarceration of the petitioner is not required, moreso, as in the one other case registered against him, he has been granted the similar concession.

8. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Dinesh son of Om Parkash is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

9. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform

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in writing each time that he is not involved in any other crime other than the cases mentioned in this order.

10. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

21.08.2023

JITESH

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