

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(209)

2023:PHHC:100911
CRM-M-13133-2023
Date of Decision: 04.08.2023

Ajay

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE PANKAJ JAIN.

Present:- Mr. Kulvir Narwal, Advocate for the petitioner.

Mr. A.K. Sehrawat, D.A.G., Haryana.

PANKAJ JAIN.J (Oral)

Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.809, dated 11.11.2018, registered for the offence under Sections 302, 216, 120-B, 34 IPC and sections 25 & 29 of Arms Act, registered at Police Station, Sadar Bahadurgarh, District Jhajjar.

2. As per the allegations levelled in the FIR, it has been alleged as under:-

“Sir, It is submitted that I Deepak s/o Dharambir is resident of Village Saveli Distt. Sonipat. My elder sister Mukesh is married in Village Chamaria with Narender s/o Sh.Hawa Singh caste jat. Today myself my brother in law (Jija) and my sister went to village Aasodha to a function organized by Rinku having blessed with son, who is our friend. At about 03.30 PM, when the complainant and his brother-in-law/jija, namely Sh. Narender were sitting on the terrace of the house of Rinku, two persons came on bike and coming on the terrace shot my Jija which hit my jija Narender in chest and shoulder and they were accompanied by two more. The boy who had fired gun-shots was Narender @ Dila s/o Labh Singh caste jat r/o Aasodha rest I do not know. Then myself and Rinku @

Dhillu brought my jija for treatment to PGIMS Rohtak. Where doctor declared my brother in law (Jija) dead. Strict action be taken against the one who fired gun shots.”

3. Learned counsel for the petitioner submits that majority of the witnesses have not supported the case of prosecution. The material witnesses including the complainant stand examined. Reference is being made to the statement of witnesses placed on record as Annexures P-3 to P-8. Petitioner, as per the custody certificate, has undergone actual custody period of more than 01 year 05 months and 20 days. Apart therefrom, the main accused, who, as per the allegations levelled in the FIR, fired a shot, already stands released on bail vide order dated 21.4.2022 passed in CRM-M-51586-2021 observing as under:-

“Petitioner seeks grant of regular bail under Section 439 Cr.P.C in his second attempt in case bearing FIR No.809 dated 11.11.2018 registered under Sections 302, 120-B, 34 IPC and Section 25 of the Arms Act at Police Station Sadar Bahadurgarh, District Jhajjar.

The FIR was registered at the instance of Deepak with the allegations that his sister was married to Narinder Kumar. On the fateful day, he along with his sister and brother-in-law had gone to attend the programme of birth ceremony in the house of Rinku on account of having friendship. Complainant and his brother-in-law Narinder Kumar were having gossips in chabutra of Rinku. At about 3:30 PM, two young boys came there on a bike and came to chabutra and opened fire upon brother-in-law of the complainant, hitting him in the chest and shoulder. Two persons were also accompanying them. One of the persons who was firing shots was Narender i.e. the petitioner and others were not known to the complainant. Complainant along with Rinku brought his brother-in-law to the hospital and the doctor declared him to be dead.

Learned counsel for the petitioner by referring to testimonies of PW-1 to PW-7 submits that the material witnesses have turned hostile. Complainant Deepak has not identified the petitioner, rather the petitioner was not amongst those two persons who came to the house of Rinku. The witness was cross-examined by the State/PP, but nothing incriminatory could be extracted from his cross-examination. Similarly, sister of the complainant has been examined as PW-2 and she has also been declared as hostile. Her cross-examination has also not yielded any incriminating material against the petitioner. Rinku in whose house the occurrence had taken place, has also not supported the case of the prosecution in the same manner.

Per contra, learned State counsel submits that one of the accused is still at large and has been declared as proclaimed offender. Out of total 23 prosecution witnesses, 8 witnesses have been examined. Petitioner is in custody since 16.11.2018.

Keeping in view the stage of the trial, custody of the petitioner and the material witnesses having not supported the case of the prosecution, at this stage, I deem it appropriate to enlarge the petitioner on regular bail without meaning anything on merits of the case.

In view of above, petition is allowed. Petitioner is ordered to be released on regular bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

Nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.”

4. Learned State counsel does not dispute the aforesaid factual assertion but submits that the petitioner has a criminal history and is involved in a number of cases.

5. Faced with such situation, learned counsel for the petitioner relies upon the judicial precedent in case of ***Prabhakar Tiwari Vs. State of***

U.P and another, 2020(11) SCC 648 and *Maulana Mohd. Amri Rashadi Vs. State of U.P., 2012(2) SCC 382* to contend that the fact of the petitioner being involved in the other cases cannot be a sole ground to decline the bail to the petitioner.

6. Consequently, the present petition is allowed. Without commenting on the merits of the case, the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

7. Needless to say nothing recorded herein shall be construed to be an expression of an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

04.08.2023

lucky	Whether speaking/reasoned:	Yes/No
	Whether Reportable:	Yes/No