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

CRM-M-13708-2022

Date of decision : 28.02.2023

Chetan

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Manish Soni, Advocate for the petitioner.

Mr. Sukhdeep Parmar, DAG, Haryana.

MANOJ BAJAJ, J.

Petitioner has filed this second petition under Section 439 Cr.P.C for grant of regular bail pending trial in case FIR No.77 dated 22.03.2019 registered under Sections 148, 149, 302, 341 and 506 Indian Penal Code, 1860 and Section 25 Arms Act, 1959 at Police Station Farrukhnagar, District Gurugram, who is in custody since his arrest on 27.03.2019.

The allegations in the FIR as noticed by the learned Additional Sessions Judge, Gurugram in the order dated 13.08.2021 are as under:-

“Tersely put, the factual back ground is that on 22.03.2019 an information was received to the police regarding the commission of murder of Pawan son of Ram Kishan, resident of village Khera Khurampur with the bullet shot injury and the injuries sustained by him with lathis and dandas. The I.O reached the reported site of occurrence, where Devender, elder brother of deceased Pawan, met to him and moved a complaint to the effect that Pawan @ Shambhu, his co-villager had nurtured an enmity against Pawan, younger brother of the complainant since the one year prior the occurrence. Around 5-6 months earlier also, he alongwith his 4-5 accomplices had visited his house with deadly weapons and had threatened to kill his brother Pawan but the co-villagers and family members intervened

and rescued Pawan. During the day time of the date of occurrence also, Pawan @ Shambhu alongwith his 4-5 accomplices had met to him (complainant) at the Chowk of village and had extended a threat to kill his brother Pawan. At around 5.30 p.m. while his brother Pawan @ Pony was approaching the village from the street situated in the outer phirni of the village alongwith Abhishek @ Ghuseri in his Alto car bearing No.HR-14Q-7521, they were waylaid by Pawan @ Shambhu and Parveen @ Nepali alongwith their 3-4 associates while reaching the site in Celario car. Suspect Pawan @ Shambhu and Parveen @ Nepali alongwith their associates alighted from the car having fire arms, lathis, and dandas. They rushed to Pawan on which Pawan and Abhishek tried to flee away. Complainant also rushed to the site in question to rescue his brother, but in the meanwhile Pawan @ Shambhu fired a gun shot which hit the foot of Pawan, due to which he fell down. All of his associates inflicted the lathi injuries to him. In the meanwhile, Pawan @ Shambhu fired another gun shot directly in the head of Pawan, due to which he died. Abhishek fled away from the site of occurrence. The noise raised at the spot had attracted the co-villagers and the family members of the deceased but the suspects extended a threat to kill them and fled away. The complainant further stated that he can identify the associates of Pawan and Parveen who were accompanying them. On the basis of the above said complaint, FIR of the case was registered and the matter was investigated.”

Learned counsel for the petitioner has argued that the petitioner was falsely implicated in the above FIR and two of his co-accused, namely, Rinku and Parveen have already been released on bail, therefore, the similar concession be extended to the petitioner as well. In this regard, he has invited the attention of the Court to order dated 04.08.2021. He submits that as per the prosecution, the alleged occurrence was witnessed by eye-witnesses, who in their deposition before the trial Court have not attributed any role to the petitioner as according to the eye witness version, the victim died as a result of firing by his co-accused-Pawan @ Sambhoo. He prays that the petitioner be released on regular bail.

The prayer is opposed by learned State counsel, who is assisted by

ASI Anil Kumar and has argued that the petitioner participated in the occurrence and as per the FSL report, weapon recovered from him was used in the commission of crime. He submits that the case of the other two co-accused, who have been released on bail is distinguishable as they were not armed with fire arm weapon and were carrying sticks/dandas being members of unlawful assembly. Learned State counsel has produced the custody certificate filed by way of affidavit of Satyabhan, Deputy Superintendent, District Prison Gurugram to contend that the petitioner is involved in various other criminal cases as well. According to him, in all there are 28 prosecution witnesses and still 14 witnesses remain to be examined. He prays that the petition be dismissed.

After hearing learned counsel for the parties and considering the above background, this Court finds that case of the prosecution is based upon evidence of eye witnesses and victim died as a result of gunshot injuries fired by accused persons. The stand of the learned counsel for the petitioner that the alleged firing is attributed to the co-accused-Pawan @ Shamboo by the eye witnesses cannot be entertained at the stage of considering the prayer for regular bail, as the entire prosecution evidence is to be examined by the trial Court at the stage of final decision.

Resultantly, without meaning any expression of opinion on the merits of the case and considering the seriousness of the offence, no case is made out for releasing the petitioner on regular bail.

Petition is dismissed.

(MANOJ BAJAJ)
JUDGE

28.02.2023

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Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No