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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-13584-2023 (O&M)

Date of decision:01.09.2023

Afroj

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rajesh Bansal, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial a case bearing FIR No.0166dated 13.03.2021, registered under Section 302 of IPC at Police Station, Chandni Bagh, District Panipat.

2. Per prosecution version, Rakesh (complainant), a resident of Nalwa Colony, Panipat, stated that his brother was killed on 13.03.2019 and his body was lying in Civil Hospital, Panipat. He went there and identified his brother's body, which displayed injuries on his head and body. He suspected that some unknown persons would have killed his brother by inflicting injuries and sought legal action against the culprits. On this complaint, an FIR under Section 302 IPC was lodged at Chandni Bagh, Police Station, Panipat. ASI Subhash conducted the investigation. Postmortem was also conducted. Statements of witnesses were recorded. Petitioner Afroj was arrested as a suspect on 15.03.2021 and he is in custody ever since. Petitioner was interrogated by the police. In pursuance of his disclosure statement, allegedly a piece of blood stained brick was recovered which was sealed and seized by the police.

3. Learned counsel for the petitioner submits that name of the petitioner was not mentioned in the FIR. He was nominated as an accused on the basis of last scene together assumption. Basis thereof is statement of one Jony son of Mangat Ram,

who stated that he saw the petitioner together with deceased Mukesh on 12.03.2021 at about 9.30 p.m. Except this, there is no other evidence against the petitioner. There is no eye witness of the occurrence. Petitioner is not involved in any other case.

3.1 He further submits petitioner is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/ or influencing prosecution witnesses. Petitioner is totally innocent and has thus been falsely implicated in the case. He submits that out of 19 prosecution witnesses, only two have been examined till date. Trial will take some time to conclude as it is proceeding at a snail pace. He submits that PWs are not appearing despite court summons. He points out to an order dated 07.08.2023 passed by learned trial Court whereby remaining PWs have been summoned throughailable warrants.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. He however, admits that no other case is pending against him.

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

6. On a Court query, under instructions from ASI Mahabir, learned State counsel informs that challan was filed on 05.05.2021. Charges were framed on 14.07.2021. Investigation *qua* the petitioner is complete. Petitioner is not required for custodial interrogation. Out of 19 prosecution witnesses, two have been examined and now the case is fixed for 18.09.2023.

7. PWs are not appearing. Order dated 07.08.2023 passed by Learned Additional Sessions Judge, Panipat, reads as below:-

“One PW Rakesh is present, but after some time he fled away from the Court. Case called repeatedly since morning, but PW Rakesh has not put his appearance before this Court. No other PW is present and examined.ailable warrant of PWs Roshan, Vivek and Sonia received back with the report of second service. Let the case is adjourned to 18.09.2023 for evidence of the prosecution. Let PWs Rakesh, Roshan, Vivek and Sonia be summoned throughailable warrant in sum of Rs.5000/- with one surety in the like amount and PWs

Sonia, Roshan and Rakesh be again summoned throughailable warrant in sum of Rs.25,000/- each with one surety in the like amount for the date fixed. Remaining PWs be also summoned accordingly for the date fixed.ailable warrants be sent through Superintendent of Police, Panipat, as the case is listed in the list of Action plan for the year 2023-24. Accused in custody be also produced before the Court on the date fixed. Jail authority be informed accordingly.”

8. Learned counsel for the petitioner submits that allegations against the petitioner *qua* suspicion of his affair with the wife of the deceased being the motive, is completely based on unfounded version created by the prosecution. Since the wife of the deceased, despite having been summoned multiple times and issuance ofailable warrants, has not come forth to support the prosecution case before learned trial Court.

9. Allegations against petitioner are a matter of trial at this stage. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been languishing in jail for more than 02 years and 5 months, being behind bars since 15.03.2021. He is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/ or influence witnesses.

10. Petitioner is stated to be 30-year old only bread earner and his family members are living in sheer penury in his absence. He has already lost his livelihood due to prolonged incarceration. Petitioner is not flight risk in any manner, given that he has a family to look after and has a fixed abode and clean antecedents.

11. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.

12. Accordingly, petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of Ld. trial Court, where his case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

13. In case, petitioner is found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.

14. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition alone and learned trial Court shall proceed without being influenced with this order.

15. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

01.09.2023

vandana

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