

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

SR. No.212

CRM-M-15447-2022 (O&M)

Date of decision:17.08.2023

Rahul @ Kapil Kumar

...Petitioner

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Vipin Mahajan, Advocate for the petitioner.

Mr. Amish Sharma, AAG, Punjab.

Mr. Amit Chaudhary, Advocate,
for the complainant.

N.S. SHEKHAWAT, J.

1. By way of filing the present petition under Section 439 Cr.P.C., the petitioner has prayed for grant of bail pending trial in case FIR No.265 dated 22.11.2020 registered under Sections 302/201/120-B IPC at Police Station Model, District Hoshiarpur.

2. The FIR in the present case was got registered by Sumninder Gupta son of Late Bhagwant Kishore Gupta. As per the complainant, on 14.11.2020, a car of his father Bhagwant Kishore Gupta and his associate lawyer namely Sia Khullar @ Geetu wife of Ashish Kushwaha was set on fire by showing it as an accident. In fact there had been some dispute between Sia Khullar @ Geetu with her husband Ashish Kushwaha.

them so many times, but Ashish Kushwaha used to extend threats to kill Sia Khullar @ Geetu. On 13.11.2020, Ashish Kushwaha had come to the house of Sia Khullar in Hoshiarpur and had a quarrel with her. However, his father intervened in the matter and made both the sides understand. However, Ashish Kushwaha hurled abuses to his father also and extended threat to kill to his father and Sia Khullar. From the enquiry at his personal level, the complainant had come to know that Ashish Kushwaha along with his accomplices Sunil Kumar, Rahul Kumar @Kapil and others had killed his father and Sia Khullar on 14.11.2020 and put them in the Celerio Car and took the same at a different place, where they were set on fire in the car itself and it was shown to be an accident. However, It was not a case of accident and Sia Khullar and Bhagwant Kishore Gupta were killed in pursuance of a conspiracy.

3. Learned counsel for the petitioner contends that initially on getting the information about the accident of Bhagwant Kishore Gupta and Sia Khullar, the matter was reported by the complainant vide DDR No.20 dated 15.11.2020. In fact Bhagwat Kishore Gupta and Geetu @ Sia Khullar met with an accident on 14.11.2020 and the car was being driven by Geetu @ Sia Khullar, which hit a tree on the roadside. Due to the impact of the accident, the celerio car caught fire and both Geetu @ Sia Khullar and his father Bhagwat Kishore Gupta died in the said accident. Even the police officials had reached at the time when the car was burning and after due inquiry, it was found that it was a case of road side accident. Still further, Section 174 Cr.P.C. proceedings were also initiated after the registration of DDR in the present case. However, after 8 days i.e. 22.11.2020, the

to ensure the false implication of the petitioner and co-accused. The complainant stated that from the enquiry conducted by him at his own level, he had come to know that Bhagwant Kishore Gupta and Geetu @ Sia Khullar were killed by Ashish Kushwaha, Sunil Kumar, Rahul Kumar @ Kapil and others and with this false allegation, the president FIR was registered after such a long delay. Learned counsel next submits that the petitioner has been falsely involved in the present case as he is the driver of Ashish Kushwaha, main accused, and he was employed by Ashish kushwaha. The petitioner used to visit different places on the instructions of Ashish kushwaha and had no reason to commit the alleged crime. Even no motive has been alleged against the present petitioner. Learned counsel for the petitioner further submits that after the arrest, the confessional statement of the petitioner was recorded, as per which, the deceased were first given poison, then murdered and thereafter they were taken to the place of occurrence in the car, where they were set on fire to portray the same as an accident. In fact, after the post-mortem, the viscera was sent and as per the report of the Chemical Examiner, no poison was detected in the various parts of body, sent by the doctor. Thus, the entire prosecution story is apparently false. Apart from that, there was enough evidence that even the recovery of gold locket was planted on the present petitioner. In fact no official of Punjab Police had ever visited the house of the petitioner and there was no question of any recovery from him. Learned counsel further contends that the petitioner was arrested in the present case on 23.11.2020 and so far only 02 witnesses have been examined out of total 37 witnesses and the trial court may take considerable time in concluding the proceedings of the trial.

4. On the other hand learned State counsel has vehemently opposed the prayer made by the learned counsel for the petitioner on the ground that there are specific allegations against the present petitioner and he was involved in one more case

5. I have heard the learned counsel for the parties and perused the case file minutely.

6. In the present case, the petitioner was arrested on 23.11.2020 and only two prosecution witnesses out of 37 witnesses have been examined so far. Apart from that, the main accused Ashish Kushwaha has already been arrested on 10.07.2023 and the trial is at initial stage. Still further, the prosecution has not been able to produce any evidence to show that the petitioner is either in a position to influence the witnesses of the prosecution or there is any reasonable apprehension of fleeing from the process of law. Further, the petitioner is in the custody for the last more than 02 years and 09 months and cannot be detained as an under trial for an indefinite period. The petitioner has been incarcerated for sufficiently long period and his further detention in custody would be violative of article 21 of the Constitution of India.

7. In view of the above, without commenting any further on the merits, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned subject to the following conditions:-

- (i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with

the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.

- (ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.
 - (iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.
 - (iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.
 - (v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.
 - (vi) In case, the petitioner involves in any other criminal activity, during the pendency of the trial, it shall be viewed seriously.
 - (vii) The concerned Court may insist two heavy local sureties and may also impose any other condition, in accordance with law, while accepting the bail bonds and surety bonds of the petitioner.
 - (viii) The petitioner shall report every first Monday in English calander month before the concerned SHO between 10.00 AM to 01.00 PM till the conclusion of the trial and SHO shall mark his presence by making an entry in the rojnamcha.
8. However, it is made clear that in case the petitioner does not comply with the conditions as mentioned above, the State shall be at liberty to move an application for cancellation of bail granted to him. It is also made clear that in case the concerned SHO does not mark the presence of the petitioner in the rojnamcha, the petitioner shall be at liberty to move an

appropriate application in this regard before the court of trial Court/Duty
Magistrate/Chief Judicial Magistrate.

17.08.2023
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO