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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-16300-2023 (O&M)

Date of decision: 11.09.2023

Jai Bhagwan @ Nanu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Ms. Snigdha Sood, Advocate and
Ms. Dakshita Deswal, Advocate,
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

ARUN MONGA, J. (ORAL)

In compliance of order dated 01.06.2023, report has been received from learned Sessions Judge, Hisar, which is taken on record and marked as Annexure 'A'.

2. After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial a case bearing FIR No.463 dated 16.12.2019, registered under Section 302, 120-B, 148 read with Section 149 of IPC and Section 25 of Arms Act, 1959 at Police Station, Narnaund, District Hisar.

3. Per prosecution version, on 01.12.2019, complainant (father of deceased Rahul) stated that his son Rahul @ Jelar along with his associates, namely, Suresh @ Kabra, Deepak, Bholi and Ritik, went to the residence of Jai Bhagwan (petitioner herein) where some heated altercation took place. Subsequently, a criminal case was registered against Rahul and his associates. On 15.12.2019, Rahul, along with his friends, invited the petitioner to the Holiday Hotel in Narnaund so as to resolve their dispute. Later, when Rakesh and Rahul were returning home from the Holiday Hotel on a motorcycle, three individuals on one motorcycle and two more on another motorcycle approached them from behind. Rakesh was driving the motorcycle, and Rahul was the pillion rider. Jai Bhagwan @ Nanu (petitioner) fired a gunshot at Rahul. They both fell off from their motorcycle. Jai Bhagwan @ Nanu then again shot

Rahul several times in his head. His other accomplice also fired multiple gunshots at

Rahul. When the complainant arrived at the scene, Rahul had already been shot multiple times all over his body. The complainant arranged for a car and transported the deceased to Jindal Hospital in Hisar for treatment but the doctor pronounced him dead. The complainant stated that since about 15 days earlier, Rahul had a serious altercation with Jai Bhagwan, the petitioner, therefore Jai Bhagwan was harboring a grudge against Rahul. Jai Bhagwan along with his associates killed Rahul just to take revenge from him. On the basis of aforesaid statement of the complainant FIR was registered on 16.12.2020. Petitioner was arrested on 23.01.2020.

4. Learned counsel for the petitioner submits that there is a delay of 14 hours in registration of FIR. She further submits that Rakesh, who is purportedly an eyewitness of the incident, was in fact inducted in the whole scenario at the instance of the complainant, who persuaded him to become an eye witness. Presence of Rakesh at the crime scene is all the more doubtful, since when the shots were fired allegedly by Jai Bhagwan and his accomplices on the moving motorcycle driven by Rakesh, having deceased as the pillion, Rakesh was not harmed at all by spray of bullets. Not only that, after a fall from motorcycle, which lost balance, he got away without sustaining even minor injuries. And thereafter, he just ran away from the crime scene. There is no MLR of Rakesh on record to show that he sustained injuries in the alleged incident. She further argues that Rakesh has been shown as the only purported eyewitness and FIR is based only on his concocted story.

4.1 She further submits that petitioner is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/ or influencing prosecution witnesses. She further urges that all material witnesses including complainant have been examined. They have all turned hostile. Thus, in all likelihood, the trial will result in acquittal of petitioner. She further contends that out of 32 prosecution witnesses, 22 have been examined. Trial will take some time to conclude as it is proceeding at a snail pace.

4.2. She canvasses that co-accused Kitabo, Aarti and Mohit alias Gunga were granted the concession of regular bail by a co-ordinate Bench of this Court vide order dated 16.10.2020 (Annexure P-2) passed in CRM-21754-2020 and CRM-M-26731-2020.

5. 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 further submits that two other cases under Section 42-A Prisons Act are pending against him.

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

7. On a Court query, under instructions from SI Neeraj, learned State counsel informs that after filing of challan, charges were framed way back on 13.07.2021. Investigation is complete. Trial has commenced. Petitioner is not required for custodial interrogation. Out of 32 prosecution witnesses, 21 have been examined and now the case is fixed for 13.10.2023.

7.1 He does not controvert that all the material witnesses including complainant have been examined and they have not supported the prosecution version.

8. Prima facie, it appears that the trial may result in acquittal of petitioner as it seems difficult to secure his conviction on the basis of hostile testimony of material witnesses. Be that as it may, 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 03 years, 7 months and 09 days, being behind bars since 03.02.2020. 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.

9. Petitioner is stated to be 22-year old young boy. He is on cross-roads of his career and 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.

10. Co-accused Kitabo, Aarti and Mohit alias Gunga were granted the concession of regular bail by a co-ordinate Bench of this Court.

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

11.09.2023
vandana

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