

215 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16523-2023

Date of Decision:28.07.2023

Kapil @ Bhanja

...Petitioner

vs.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Rakesh Nehra, Senior Advocate with
Mr. Sourabh Bhorla, Advocate
for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

N.S.Shekhawat J. (Oral)

The petitioner has filed the instant petition under Section 439 of the Cr.P.C. with a prayer to grant regular bail in case FIR No.239 dated 30.06.2021 registered under Sections 302, 120-B, 34 of IPC and Sections 25 and 27 of Arms Act, 1959, at Police Station Asaudha, District Jhajjar, Haryana.

The FIR in the present case was registered on the basis of the statement made by Sharwan son of Diwan Singh, resident of village Asaudha Siwan, District Jhajjar. As per the complainant, he was running a service station at village Asaudha on rent since last one and half year and his brother Sunil was running a business of gravel (Bajri) in the village; however, he was working with him at the service station since last 20 days. His brother Sunil was preparing to contest election for the post of Sarpanch in the village and due to this, their co-villager Vinod son of Sunder had threatened his brother not to contest the election of Sarpanch. On 30.06.2021, he was present at his service

station with his brother. He was lying inside the room and his brother Sunil was cleaning the swift car, which was parked there for service. In the meantime, 3/4 persons came in a grey colour Brezza car and fired several bullets on his brother Sunil, after alighting from the said car. On hearing the noise of firing of bullets, he came outside and saw that his co-villager Rocky son of Vinod was among the boys, who were firing bullets and they fled away in the same Breeza car. He shifted his brother to hospital for treatment, where the doctors declared his brother dead. His brother Sunil was murdered by Rocky, after conspiring with his accomplices due to enmity of elections of Sarpanch.

Learned counsel for the petitioner contends that from a bare perusal of the FIR, it is apparent that the petitioner was not named in the FIR nor any specific role was assigned to him in the present case. In fact, at the time of occurrence, the petitioner was present at the service station, where he had come for the service of his swift car and the occurrence had taken place in his presence. Even he tried to apprehend one of the accused, when the assailants were trying to flee from the crime scene. Not only that, even the petitioner took the complainant and Sunil, injured (since deceased) to the hospital in his car and got the same car recovered to the police. Since the petitioner was a witness, his statement under Section 161 Cr.P.C. (Annexure P-1) was recorded by the Incharge, Police Post, Mandothi on 30.06.2021 itself and the said fact is also apparent from the CCTV footage (Annexure P-2). Further, the petitioner was cited as a prosecution witness in the final report under Section 173 Cr.P.C., which was presented against the accused, Amit @ Lota and Bhupender @ Bhupi on 19.10.2021 and the said report was annexed

as Annexure P-3 with the petition. During the course of investigation, the police conducted the detailed investigation against several accused and there was no incriminating evidence against the present petitioner during this period.

Learned counsel for the petitioner further submits that the petitioner has been wrongly arrested on the basis of the disclosure statements made by co-accused after almost four months of commission of crime and was ordered to be arrested on 10.09.2022 by the police. Even after his arrest by the police, the investigation was conducted against the petitioner also and no recovery was effected from him. Even otherwise, there was no direct or indirect evidence, which proves the complicity of the present petitioner in the alleged occurrence and the police has wrongly arrested the petitioner. Learned counsel further contends that the charge was ordered to be framed against the petitioner on 17.03.2023 and out of total 35 witnesses, no witness has been examined so far. Thus, the custody of the petitioner will not serve any purpose.

On the other hand, learned counsel appearing on behalf of the State of Haryana has vehemently opposed the prayer made by learned counsel for the petitioner by contending that the petitioner was also an accomplice of the main accused, who committed the crime. Apart from that, there are serious allegations against the present petitioner and he is involved in one more case i.e. FIR No. 360 dated 15.10.2021 under Sections 379, 411 of IPC registered at Police Station Arya Nagar, Rohtak. However, learned State counsel admits that the petitioner is on bail in the said case.

I have heard the learned counsel for the parties and perused the record.

It is not in dispute that initially, the petitioner was mentioned as a prosecution witness and even he was cited as a prosecution witness in the final report under Section 173 Cr.P.C., which was presented against Amit @ Lota and Bhupender @ Bhupi on 19.10.2021. During investigation, several accused were interrogated and the involvement of the petitioner was not found. However, on the basis of the disclosure statements made by certain accused, he was arrested in the present case on 10.09.2022. It is also not in dispute that the petitioner had not participated in the alleged occurrence and no recovery was effected from him. Still further, he is in custody since 10.09.2022 and no witness has been examined so far; thus the conclusion of the trial may take considerable time and his further detention is not warranted.

In view of the above-said facts and without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate, concerned.

28.07.2023
hemlata

(N.S.SHEKHAWAT)
JUDGE

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