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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-16290-2023 (O&M)

Date of decision:12.09.2023

Rohit alias Chhotu

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Chanakya Pandit, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

ARUN MONGA, J. (ORAL)

This is fifth foray of the petitioner before this Court. He seeks his release as an undertrial in case bearing FIR No.108 dated 12.08.2019, registered under Sections 302, 346, 201, 341, 364, 365, 202, 120-B and 34 of IPC at Police Station, Mohana, District Sonapat. His earlier three bail applications were dismissed as withdrawn (Annexures P-6 to P-8) and fourth bail petition was disposed of with a request to learned trial Court to conclude the trial within 09 months from 25.01.2023.

2. An FIR was registered based on a complaint by the complainant, Sanjay. He reported that his brother, Surender, who worked as a security guard, left home for duty on August 11, 2019, and had not returned since. Sanjay suspected that someone might have abducted him. A missing person report was filed, and Surender's phone was traced to a location near a roadside ditch at the scene of the incident, where bloodstains were discovered.

2.1. On August 22, 2019, a telephonic information was received that an unidentified male body had been discovered near the Halalpur canal on August 20, 2019. In response, FIR No. 283, dated August 20, 2019, was registered at the Kharkhoda Police Station under Sections 302 and 201 of the IPC. The deceased's body was taken to the Government Hospital mortuary for identification, and a public

notice was published in the newspaper. After reading the public notice, the complainant identified the deceased as his brother, Surender.

2.2. On August 31, 2019, an information was received from the Murthal Police Station that the accused, Sachin, alias Chinna, had been arrested in connection with FIR No. 290, dated August 30, 2019, under Section 25 of the Arms Act. During his arrest, Sachin made a disclosure statement regarding his involvement in the crime that occurred on August 11, 2019. He implicated co-accused Rahul, Rohit (the present petitioner), Rinku, and Parvesh in the crime, including disposing of the deceased's body in the canal near Kailana by tying his hands and feet. All the accused were subsequently apprehended. According to Sachin's disclosure statement, Rohit, the petitioner, led to the recovery of a Swift car with registration No. HR 69D-0983 and the Aadhar card of the deceased, Surender.

3. Learned counsel for the petitioner argues that co-accused, namely, Parvesh has been granted regular bail by a coordinate Bench of this Court vide order dated 15.02.2023 (Annexure P-10) in CRM-M-59091-2022.

3.1. He submits that petitioner was arrested on 31.08.2019 for having committed the offence of murder in the present FIR on the basis of custodial disclosure statement of Sachin @ Chinna. Such a statement is not *per se* admissible in evidence. There is no other credible evidence against the petitioner that could possibly connect him with the murder of deceased Surinder. Petitioner is innocent.

3.2. He further submits that three material witnesses, including the complainant, have not even supported the case of prosecution.

3.3. He 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 further submits that out of 34 prosecution witnesses, 18 have been examined till date. Trial will take some time to conclude as it is proceeding at a snail pace.

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 further submits that two other cases are pending against him. In one case under Section 25 of Arms Act, he has been acquitted and in the other he is not on bail.

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

6. Matter was heard yesterday i.e. on 11.09.2023 and, following order was passed:

“Present petition was allowed in open Court with reasons to follow. However, while dictating the bail order, Order dated 25.01.2023 passed by a coordinate Bench of this Court which inadvertently escaped notice at the time of hearing has now been brought to my notice. Vide said order a bail petition filed earlier by same petitioner was disposed of with a request to learned trial Court to conclude the trial within 09 months from 25.01.2023. It is deemed more appropriate that the matter be put up for re-hearing so as to seek further assistance of learned counsel. Post it on 12.09.2023 for re-hearing.”

7. *Apropos* order dated 11.09.2023, on resumed hearing today, learned counsel for the petitioner submits that it is only owing to the directions issued by a Coordinate Bench vide order dated 25.01.2023 (Annexure P-9) that prosecution evidence has concluded expeditiously. He, in fact, relies on testimonies of the material private witnesses contained at Annexures P-2 to P-4 (which have also been corresponding appended with the report as Annexures R-1 to R-5) and states that none of them have supported the prosecution version. In view thereof, it is highly unlikely that based on hostile testimonies of the material witness, the prosecution would be able to secure conviction of the petitioner.

8. Further more, learned counsel states that it is in light of the prosecution evidence, that despite declining of bail vide order dated 25.1.2023 (Annexure P-9), subsequent thereto other co-accused preferred bail petitions and were accorded concession of bail by a coordinate Bench of this Court. He states that trial of the

petitioner is likely to result in acquittal and he also deserves bail like other co-accused.

9. On a Court query, under instructions from ASI Sanjay Sangwan, learned State counsel does not controvert the testimonies of material witnesses, who have turned hostile, and which are being relied by the petitioner. He informs that challan was filed on 22.11.2019 and charges were framed way back on 05.02.2020. Petitioner is not required for custodial interrogation. Out of 33 prosecution witnesses, 25 have been examined and official witnesses are left to be unexamined.

10. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against the petitioner are matter of trial and can only be adjudged on the conclusion thereof. Whereas, petitioner has already been languishing in jail for more than 04 years and 5 days, being behind bars since 04.09.2019. 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.

11. Petitioner is stated to be a young boy, aged 22 years and was working in a workshop. He has lost his livelihood due to prolonged incarceration. Having family and fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

12. Co-accused Parvesh has been granted the concession of regular bail by a co-ordinate Bench of this Court.

13. 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.

14. Accordingly, petitioner is ordered to be released on bail, if not required in any other case, 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.

15. 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.

16. 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.

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

(ARUN MONGA)
JUDGE

12.09.2023
vandana

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