

CRM-M-18149-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-18149-2023 (O&M)
DECIDED ON: 21.04.2023

AZRUDDIN@AZRU

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Dr. Pankaj Nanhera, Advocate for the petitioner.

Mr. Mohit Thakur, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

The instant petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in FIR No.211 dated 26.05.2021 under Sections 302, 34, 120-B of IPC, 1860 and 25, 54 and 59 of Arms Act registered at Police Station Sadar Nuh, District Nuh, Haryana.

Learned counsel for the petitioner contends that the petitioner has been falsely implicated. He further contends that date of occurrence is 25.05.2021, on that day after the admission of the deceased in the hospital, a ruqa was sent to the Police. The Police immediately came to the hospital for recording the statement of the complainant but the complainant did not make any statement. On the very next day i.e. on 26.05.2021, the complainant made a statement alleging that one Younus is an offender who has killed the deceased, namely, Rahul. However, during the course of investigation, Younas was exonerated and by

another subsequent statement, 09 persons were named by the complainant who were again exonerated after investigation as per the version of the counsel for the petitioner narrated in the present petition which is also not controverted by the learned counsel for the respondent-State. It is further submitted by the learned counsel for the petitioner that finally on 16.06.2021 again the police has recorded a supplementary statement. The petitioner came into the picture and was nominated as an accused. However no cogent evidence is available on the record.

On the other hand, learned State counsel has placed on record a custody certificate dated 20.04.2023, which is taken on record. According to which, the petitioner has undergone 01 year 10 months and 02 days of actual custody. He contends that the stand taken by the counsel for the petitioner stating that a country-made pistol has been recovered from the petitioner i.e. .315 bore and the said weapon has been used by him alone while causing the murder of deceased-Rahul.

Controverting the aforesaid fact and denying his urge the learned counsel for the petitioner drew attention of this Court to the FSL Report dated 15.12.2021 (Annexure P-3) whereby no definite opinion has been made by the expert as to result of examination except saying that no definite opinion could be formed regarding the weapon linkage in respect of country-made pistol marked W/1 due to lack of sufficient comparable individual characteristic mark.

This Court is of the firm opinion that an FSL report also raises a doubt which is sufficient at this stage prima facie in favour of the petitioner who has already undergone 01 year 10 months and 02 days of his incarceration and not involved in any other case except FIR No.45/2018, under Section 385, 386, 342,

120-B read with Section 34 of IPC, Police Station Dwarka Sought, South West Delhi.

Looking into the totality of the fact it can be culminated that petitioner has reasonable custody undergone and the FSL report is not concrete with regard to the use of the weapon alleged to have been recovered from the possession of the petitioner apart from the fact that he has been arrayed as an accused in the third supplementary statement. All these circumstances are sufficient to draw an inference before this Court that *prima facie* there is a strong probability that petitioner has been named as an after thought and improved version having earlier named 10 other persons who has already been exonerated in the investigation.

In view of the above and also taking into consideration the fact that the trial is likely to take some time, no useful purpose would be served by keeping him behind bars, the petition deserves to be allowed. Therefore, the petitioner is directed to be released on regular bail on furnishing bail and surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned.

The present petition is, therefore, allowed.

(SANDEEP MOUDGIL)
JUDGE

21.04.2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No