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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-19534-2022
Date of Decision: 02.06.2023

Rajender @ Raja Petitioner

Versus

State of Haryana Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Sahil Choudhary, Advocate for
Mr. Amit Choudhary, Advocate
for the petitioner.

Mr. Amrik Narwal, DAG, Haryana
for the respondent/State.

Mr. Vikas Bishnoi, Advocate
for the complainant.

HARSH BUNGER J.

1. Petitioner (Rajender @ Raja) has filed the present petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case bearing FIR No.175 dated 19.08.2021, under Sections 120-B, 148, 149, 201, 302 and 364 of the Indian Penal Code, registered at Police Station Bhattu Kalan, District Fatehabad.
2. Custody certificate dated 27.03.2023 of the petitioner is filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.
3. Briefly, the aforesaid FIR was registered on the complaint of

one Ajit Singh, wherein he stated that he along with his father (Hanuman Singh), mother (Saroj Rani) and sister (Monika) live in Dhani, situated in fields. On 17.08.2021, there was an engagement function of complainant's sister in the said Dhani, where several relatives were present, who left on 18.08.2021 and on the same day, complainant's sister Monika also went with his maternal uncle Vinod s/o Chander Bhan to Hisar. Subsequently at about 11:00 A.M., when the complainant told his father that he is also leaving for studies to Hisar then his father expressed fear to his own life at the hands of Bhoop Singh Dudi, Pardeep, Krishan, Bajrang, Vikram, Chhotu Ram, Vijay @ Molu, Dholu, Rajender (petitioner), Satish, Jaivir and Sajjan and told the complainant that on the said date (18.08.2021), it was the turn of his father to water the fields from 8:20 P.M. to 10:00 P.M., however, it depends upon the aforesaid Bhoop Singh Dudi and others that at what time they would allow the petitioner's father to water the fields as the said persons had earlier also threatened to kill him with regard to the water timings at night. It was also stated by complainant's father that the aforesaid persons can cause him injuries or even kill him and the complainant should consider this thing. However at 1:45 P.M., the complainant left for Hisar and on the morning of 19.08.2021, he received a call from his maternal uncle Vinod and his brother Naresh Dui about the death of his father. It was told to him that dead body of his father was lying in the General Hospital, Fatehabad and several injuries were caused on his body with deadly weapons. It is stated in the complaint that the dead body of complainant's father was brought to the Hospital by Rajender as a case of road side accident. When the complainant along with his maternal uncle Vinod, brothers Sajjan Kumar and Naresh Kumar and other relatives reached the Hospital, they found several injuries on the head, arm, back and feet of the body of complainant's father. It is further stated

that the death of complainant's father did not occur due to some road accident, however, the complainant is fully confident that as informed by his father, the aforementioned persons, namely Bhoop Singh Dudi, Pardeep, Krishan, Bajrang, Vikram, Chhotu Ram, Vijay @ Molu, Dholu, Rajender (petitioner), Satish, Jaivir and Sajjan, after hatching a conspiracy, committed the murder of complainant's father Hanuman Singh with deadly weapons over water dispute.

4. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in case FIR No.175 dated 19.08.2021. It is submitted that there is no direct evidence in the form of eye-witness against the petitioner and the case is based upon falsely created circumstantial evidence. It is stated that there is no evidence on record to show that the petitioner was the last seen person accompanying the deceased (Hanuman Singh).

5. Learned counsel for the petitioner submits that the petitioner had applied for grant of regular bail before the Court of Sessions Judge, Fatehabad, which was wrongly declined vide order dated 15.03.2022. He submits that the petitioner has undergone custody for a period of one year, six months and six days (as on 27.03.2023); investigation of case is complete, challan has been presented and even charges have been framed on 29.10.2022. It is further submitted that out of the total forty seven prosecution witnesses, only six have been examined by now, thus, conclusion of trial will take some time and no useful purpose would be served with further incarceration of the petitioner. Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail is made.

6. Per contra, learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offences. Learned State counsel submits that the petitioner is involved in five other cases and he does not enjoy clear antecedents. Learned State counsel submits that the petitioner has played active role in the crime which is heinous in nature, relating to murder of father of the complainant namely Hanuman Singh. It is submitted that there is sufficient material/evidence on record to prove the complicity of the petitioner in the case. It is stated that as per the disclosure statement of the co-accused, the petitioner had assaulted deceased-Hanuman with iron *sariya* and the petitioner has also suffered a disclosure statement and got the place of occurrence demarcated. Learned State counsel has further stated that in case the petitioner is granted bail then he may tamper with the evidence and influence the material witnesses or may abscond and flee from justice which may delay trial, accordingly, it is prayed that the petitioner is not entitled to the concession of regular bail.

7. I have heard learned counsel for the parties and perused the paper book; status report as well as the custody certificate of the petitioner handed over by learned State counsel.

8. The instant case relates to the murder of Hanuman Singh (father of the complainant) who is alleged to have been murdered by the petitioner along with other co-accused by hatching a criminal conspiracy and being members of an unlawful assembly armed with deadly weapons and in prosecution of the common object. As per the status report, the petitioner is stated to have got recovered a motorcycle used in the offence and also the mobile phone from which a call was made at number 112. The allegations against the petitioner are serious and grave in nature. As regards the submission of learned counsel for the petitioner that the petitioner has

suffered long incarceration and hence he be released on bail suffice it to say that long incarceration cannot be the sole ground for grant of bail specially in a case of heinous offence of murder like in the present case. In ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav, 2004(2) RCR (Criminal) 254***, Hon'ble Apex Court held as under:

"The condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitled the accused to be enlarged on bail, nor the fact that the trial is not likely to be concluded, in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

9. Further, as per the custody certificate, the petitioner is stated to be involved in five other cases out of which two case FIR's i.e. FIR No.21/2021 and FIR No.20/2021, dated 07.02.2021 are registered under Section 174-A of the Indian Penal Code, 1860. Thus, the apprehension of the learned State counsel that in case the petitioner is released on bail, then he may abscond, cannot be brushed aside lightly.

10. Thus, keeping in view the seriousness and gravity of the offence with likelihood of the petitioner tampering with the prosecution evidence and even absconding being there, the petitioner is not entitled for the

concession of regular bail in this case. Accordingly, the present petition under Section 439 Cr.P.C. seeking grant of regular bail to the petitioner, under Sections 120-B, 148, 149, 201, 302 and 364 of the Indian Penal Code, registered at Police Station Bhattu Kalan, District Fatehabad, is dismissed.

11. Nothing stated here-in-above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

12. Pending application/s, if any, shall also stand disposed of.

02.06.2023*Himani***(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No