

CRM-M-19713-2023 (O&M)

223

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-19713-2023 (O&M)

Date of decision: July 19, 2023

Subhash @ Channi

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Daljeet Singh Virk, Advocate for petitioner.

Mr. Karan Garg, AAG Haryana.

ARUN MONGA, J. (ORAL)

Petitioner seeks bail in case bearing FIR No.220 dated 12.09.2017, registered under Section 395 of the Indian Penal Code, 1860 (for short 'IPC'), at Police Station, Bhattu Kalan, District Fatehabad.

2. Per prosecution version, on 01.09.2017, when complainant was going in his Swift car to his village, a Bolero Camper vehicle intercepted him and few persons, including petitioner, one Arvind @ Kundu and other young men assaulted him and snatched his Swift car, mobile phone, some cash and driving licence along with other documents of the car. An FIR was registered. Petitioner was arrested as a suspect on 24.02.2018 and is in custody since then.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. He submits that FIR in question has been registered after a delay of 7 days. Petitioner is in-charge of a licensed liquor vend of the area and complainant-Prem Kumar was indulging in illegal sale of liquor and there is/was thusa business rivalry between them. Swift car was alleged recovered from co-accused, namely, Iqbal, who has already been granted concession of regular bail by learned trial Court. He further submits that similarly placed co-accused, namely, Arvind @ Kundu and Surender have also been granted concession of bail by co-ordinate Bench of this Court vide orders dated 05.03.2019 and 20.03.2023 (Annexures P-2 and P-3, respectively). No recovery was

CRM-M-19713-2023 (O&M)

effected from the petitioner. Learned counsel for petitioner further contends that even the complainant himself later on did not support the prosecution and has turned hostile and trial is likely to result in his acquittal. He relies on testimony of complainant dated 17.07.2019, which he has handed over in course of hearing and the same is taken on record as Annexure 'A'.

4. On the other hand, learned State counsel, on instructions from SI Hardyal Singh opposes the bail petition. He submits that petitioner has committed serious offence. There are 11 more cases against the petitioner. If enlarged on bail, may tamper with the evidence and/ or influence rest of the witnesses.

4.1. In rebuttal, learned counsel for petitioner contends that petitioner has been acquitted in 7 cases.

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

6. It transpires that trial has already commenced and petitioner is not required for custodial interrogation and he is being kept in judicial custody, given the apprehension of tampering with the evidence and/ or influencing the witnesses. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been languishing in jail for the past around 5 years in preventive custody. Petitioner is stated to be 36-year old unmarried person and has added responsibility of his parents, who are living in penury, in his absence. There is no likelihood of his fleeing from justice.

6.1. Trial is unlikely to conclude in near future. Out of 34 witnesses, 11 have been examined. It is indeed a case where complainant himself has turned hostile and there seems to be every likelihood of petitioner's acquittal in the trial, as contends the learned counsel for petitioner. At this stage, in view of the testimony of complainant (Annexure 'A'), which is on record, I am of the view that petitioner is entitled to be released on bail. Case of petitioner is also at par with co-accused Arvind, who has been extended the concession of bail by a co-ordinate bench of this Court.

CRM-M-19713-2023 (O&M)

7. 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 petitioners in further preventive custody.
8. Accordingly, petitioner is to be released on bail, if not required in any other case, on his furnishing bail bonds and surety bonds to the satisfaction of learned 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.
9. 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.
10. It is made clear that any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for limited purpose of bail hearing alone and learned trial Court shall proceed without being influenced with this order.
11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 19, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No