

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

279

CRM-M-21052-2023
Date of decision: 26.05.2023

AMIT

....Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Vishal Garg Narwana, Advocate
Mr. Nitin Sachdeva, Advocate
for the petitioner.

Mr. Vivek Chauhan, Addl. A.G. Haryana.

VINOD S. BHARDWAJ. J. (ORAL)

This is a second petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No. 428 dated 19.11.2020 registered under Section 302, 506 & 120-B of the Indian Penal Code, 1860 and Section 25 of the Arms Act (Annexure P-1) at Police Station Jind Sadar, District Jind.

2. The facts, necessary to dispose of the present bail petition are that the present FIR No. 428 dated 19.11.2020 had been registered on the statement of Sachin son of Jagbir, resident of village Bibipur, wherein he has stated that:

"He is resident of above said address and is an agriculturist. He is ITI pass. Today, at about 5.00 AM, he, his uncle's son Manoj son of Rajesh, Sumit son of Joginder Singh, Jat both residents of Bibipur had gone towards Senior Secondary School for morning walk. After the

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morning walk, at about 5.30 AM they were coming towards the school, on the way two boys, out of which one is Amit son of Dharambir, Caste Jat r/o Bibipur and he does not know the name of accompanying boy met and both were having pistol in their hands. When Manoj was passing nearby them, out of them Amit fired upon the back of Manoj and his associate also fired upon Manoj, which hit on the chest of Manoj. Amit again fired upon Manoj, which hit his left arm. On sustaining the fire shots, Manoj fell down on the road in front of school. When they tried to come near, then they asked them to go back, otherwise, they will loose their life, by pointing pistol, on which he and Sumit moved back. Thereafter, both the boys fled away from there towards Igrah road with their respective weapons. When they checked Manoj after coming to near him, Manoj had already died at the spot due to the fire shots. Thereafter they saw Satish son of Dharambir, Mohit son of Rajesh, Ramehar son of Chander Bhan, Jasmer s/o Chander Bhan, Dharambir s/o Gulzair, Umed son of Gulzari residents of village Bibipur, were also involved in the murder of Manoj, who were also present at Igrah Road. Both the murderers went with them. About 4-5 days ago from today, his Bua's son Ravinder son of Rampal r/o Dharodi, had come to their village Bibipur, at that time, wife of Rajesh son of Gulzari had threatened him that they will take revenge of the death of Sandeep within one week. Manoj has been murdered by them by hatching a conspiracy. Legal action be taken against them."

3. During investigation, inquest proceeding was conducted.

Scene of crime team inspected the spot and spot was photographed.

petitioner/accused Amit and Rishi, who were arrested in case FIR

No.276 dated 14.12.2020 under Sections 392,120-B,201,34 IPC and 25

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of Arms Act, P.S. Julana, made disclosure statements regarding commission of offence in the present case. On 1.2.2021, accused Amit and Rishi were joined into investigation and were arrested in the present case. They made disclosure statements. Co-accused Rishi got recovered one empty cartridge of 315 bore. On 2.2.2021, petitioner/accused Amit alias Balla got recovered one motorcycle bearing registration No.HR31-H-1983 and one empty cartridge of 315 bore. During investigation, Satish, Mohit, Ramehar, Jasmer, Chanderbhan, Dharambir, Umed and Kavita were found innocent.

4. Learned counsel appearing on behalf of the petitioner contends that he has been falsely implicated in the present case merely on the strength of recovery of weapon which is alleged to have been used in the commission of the offence. He contends that the case of the prosecution is based on an eye-witness account and the said eye-witness has not supported the case of the prosecution during deposition before the Court. He further contends that as many as 30 witnesses has been cited by the prosecution and only 19 witnesses have been examined so far. The petitioner has undergone an actual custody of more than 02 years and 03 months. He further contends that apart from the recovery of the weapon and the statement of the eye-witness recorded under Section 161 Cr.P.C., there was no other evidence that could link the petitioner to the commission of the offence and that as the petitioner has already undergone substantive sentence and the witnesses of the prosecution have not supported the case of the prosecution, further incarceration in custody is likely to defeat ends of

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justice.

5. Per contra, learned counsel appearing on behalf of the respondent-State vehemently argues that the petitioner is a habitual offender and is involved in other case as well. He further contends that the weapon used in the commission of offence have been recovered from the possession of the petitioner and the examination of the same was undertaken whereupon the empty cartridges and bullet recovered from the body of the deceased were found to be matching with the fire arm recovered from the possession of the petitioner. He thus submits that the participation of the petitioner is duly established. He further submits that merely on account of the prosecution witnesses not supporting would not defeat the case of the prosecution since the weapon used in the offence has already been recovered from the possession of the petitioner and as such the said evidence can be duly taken into consideration by the trial Court at the stage of final adjudication. He, however, fails to dispute the fact that the petitioner has already undergone an actual custody of more than 02 years and 03 months and that only 19 witnesses out of total 30 witnesses have been examined so far.

6. Learned counsel appearing on behalf of the petitioner controverts and submits that the other cases in which the petitioner has been involved should not stand in the way of the petitioner for being considered eligible for grant concession of bail especially when prosecution witnesses have not supported the prosecution version.

7. I have heard learned counsel appearing on behalf of the

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respective parties and have gone through the documents appended alongwith petition with their able assistance.

8. Without commenting on the merits of the present case, lest it may prejudice the final out come of the trial and taking into consideration the period of actual custody undergone by the petitioner, the stage of the trial, the deposition of the respective witnesses and disputed questions on record, I deem it appropriate to enlarge the petitioner on bail upon furnishing bail bonds/surety bonds to the satisfaction of the Trial Court.

9. The instant petition is allowed and the petitioner is ordered to be released on bail on his furnishing the requisite bail bond/surety to the satisfaction of the Trial Court/Duty Magistrate concerned.

10. It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

11. The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of the material available.

The petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

MAY 26, 2023

Vishal sharma

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>