

CRM-M-21734-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

216/2

CRM-M-21734-2023

Date of decision: 12.09.2023

Deepak Kumar

....Petitioner

V/s

State of Haryana

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Gurbir Singh Sandhu, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (Oral)

After being declined bail by learned trial Court, petitioner before this Court seeks his release as an undertrial in case bearing FIR No.167 dated 12.04.2018 registered under Sections 120-B, 302 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') (Section 212 IPC added later on) and Section 25 of the Arms Act, 1959, at Police Station, Rai, District Sonapat.

2. Per prosecution case, on 12.04.2018 around 07:00 pm, complainant alleged that three persons came on a motorcycle with muffled faces to his fields where his father was present. They started firing indiscriminately at his father due to which he fell down and succumbed to his injuries. After committing the murder, all the accused decamped with their respective weapons on their motorcycle. Complainant raised suspicion on Manjeet son of Umed, Raju Bhasodi and Akshay, as the ones who had committed the murder as they had issued threats to his father at the time of making bid for animal contract at Yamuna Bridge. Five days thereafter i.e., on 17.04.2018, complainant suffered supplementary statement regarding the aforesaid incident and involvement of other accused in murder of his father. In course of investigation, name of the petitioner surfaced, as one of the

perpetrators of crime, who was also involved in the alleged occurrence. Petitioner was, thus, arrested as a suspect on 23.05.2018.

3. Learned counsel for the petitioner submits that there is no evidence against the petitioner except the disclosure statement recorded in another case. He submits that three material witnesses i.e., PW-1-Raghubir Singh, PW-2-Sajjan Pal and PW-3-Raj Kumar and eyewitness/complainant, namely, Manish, who stepped into the witness box as PW-9, have not supported the case and turned hostile. He further urges that complainant in his supplementary statement dated 17.04.2018 (Annexure P-2) had added names of 12 more persons in which too petitioner had not been nominated as accused. However, in the challan presented by the police, altogether different story was introduced and three persons, namely Yogesh @ Yoni, Pardeep @ Poppy and Deepak (present petitioner) were named as the persons, who had actually fired at the deceased and that petitioner had allegedly conspired with those persons to commit the murder. Further submits that petitioner was not even present at the spot at the time of occurrence.

3.1 Learned counsel further contends that nothing is to be recovered from the petitioner. Further submits that challan has already been presented. Conclusion of trial will take long time. Thus, no useful purpose would be served by keeping the petitioner behind the bars.

3.2 He further states that co-accused has been accorded concession of bail by a coordinate Bench of this Court vide order dated 07.09.2018 passed in CRM-M-38552-2018 contained at Annexure P-8 while the petitioner, whose case is on much better footing, is languishing in jail, he contends.

4. Per contra, learned State counsel, opposes the bail petition and contends that petitioner has committed a serious offence. He further submits that petitioner along with other co-accused committed the murder of father of the complainant in a pre-planned manner and does not deserve the concession of bail.

In case, petitioner is granted concession of bail, there are chances of his fleeing from justice, since petitioner is involved in six other cases of similar nature.

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

6. On a Court query, learned State counsel, on instructions from ASI Yogesh, does not controvert that not only eye-witness/complainant but three material witnesses, on whom the prosecution case hinges, have turned hostile. Challan was presented on 06.05.2020. Investigation is complete, petitioner is thus not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against petitioner are a matter of trial at this stage. Trial has commenced and out of total 45 witnesses, 10 have been examined so far. Conclusion of trial is still likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for the last more than 05 years and 03 months, being in custody since 23.05.2018.

9. Petitioner 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. There is no probability of tampering with evidence as the same has already been seized by the investigating agency.

10. It is stated that petitioner is a 33-year old family person and having fixed abode. It is unlikely that petitioner is flight risk and/or will flee from trial proceedings.

11. Co-accused of petitioner was granted the concession of bail by a co-ordinate Bench of this Court.

12. Considering the overall scenario and without commenting on merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep petitioner in further preventive custody in instant case.

13. Accordingly, petitioner is ordered to be released on bail, in case 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.
14. 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 their bail in the instant case.
15. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits 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.
16. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 12, 2023
Ajay

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