

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.22813 of 2023 (O&M)
Date of decision: 04.07.2023

Ved Parkash
....Petitioner
Versus
State of Haryana
....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Hanima Grewal, Advocate
and Mr. Jaswinder Singh, Advocate
for the petitioner.

Mr. Harsh Vardhan Shehrawat, AAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 2nd petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.83 dated 10.03.2020, for offence punishable under Sections 148, 149, 302, 307, 323, 506 of the Indian Penal Code, 1860 (in short 'IPC') (Section 325 IPC added later) and Section 25 of the Arms Act (deleted) and Section 27 of the Arms Act (added later) registered at Police Station Gadpuri, District Palwal.

The earlier one was dismissed as withdrawn on 04.03.2022.

Brief facts of the case are that the FIR was registered at the instance of one Sudesh Kumar, who had stated that he is an agriculturist and on 09.03.2020, he along with his nephew namely Narbir Singh, were coming on their vehicle from Kosi Kalan, U.P. to their home

Chhaprola. At about 08:30 PM, when he and his nephew were walking on the street, Ved Parkash @ Ved Pal (petitioner herein), Ombir, Puran Singh and Jitu along with three unknown persons had come in a Red colour Thar Jeep, belonging to Ved Parkash @ Ved Pal and Ved Parkash @ Ved Pal started hurling abuses on him and when the complainant asked him not to use the abusive language, he fired upon him with his Pistol but the complainant escaped. Thereafter, he gave a phone call to Vijay Pal to come to the spot as the complainant is surrounded by the aforesaid persons. In the meantime, Vijay Pal came on his motorcycle and when he came near to the complainant, Ved Parkash @ Ved Pal fired a shot, which hit on the chest of Vijay Pal and when the complainant raised noises, the accused persons started running away and while running away, they hit the complainant with the vehicle and also threatened to kill him. On the spot, Satpal, Deep and Narbir took the complainant and Vijay Pal to the hospital where Vijay Pal was declared dead.

Counsel for the petitioner has argued that the new ground for filing the present bail application is that both the persons, who are the eye-witnesses in the first part of the FIR i.e. the complainant Sudesh Kumar, who appeared as PW-1 and his nephew Narbir Singh, who appeared as PW-2, have not supported the prosecution version. In the statement of PW-1 Sudesh Kumar, it is stated that he do not know anything about the case and the occurrence did not take place in his presence and some unknown person committed the murder of his

brother. This witness was declared hostile and was permitted to be cross-examined by the Public Prosecutor. In the cross-examination by the Public Prosecutor, he was confronted with the statement made by him with the police, however, he denied having made any such statement though, the portion of the statement was specifically confronted with this witness but he denied having made any such statement to the police.

In the statement of PW-2 Narbir Singh, who is also the nephew of PW-1 as well as the deceased Vijay Pal, it is stated that he do not know anything about the case and the alleged occurrence did not take place in his presence. This witness was also declared hostile and was permitted to be cross-examined by Public Prosecutor and in a similar fashion, he was confronted with the statement given to the police, however, he also denied the same. Both statements are taken on record as 'Mark A'.

Counsel for the petitioner has, thus, argued that both the prime witnesses have not supported the prosecution version and the statement of other two witnesses, who are named in the later part of the FIR i.e. Satpal and Jai Singh, by PW-1 Sudesh Kumar, who are in fact the witnesses of the incident when the complainant and Vijay Pal were shifted to the hospital for treatment.

Counsel for the petitioner has further submitted that even as per the statement of Sudesh Kumar, recorded under Section 161 Cr.P.C., nothing is stated that the victim was also carrying any fire arm.

Counsel for the petitioner has then referred to the MLR of deceased wherein 06 injuries are defined and argued that none of the injuries were inflicted on the hand of the deceased, a fact which is mentioned by PW-1 Sudesh Kumar in the FIR.

Counsel for the petitioner has also argued that at the first instance, when the police reached at the hospital, the statement of Sudesh Kumar was not recorded as he was not found present at the hospital.

Counsel for the petitioner has further contended that the petitioner is in custody for the last about 03 years and 03 months; charges were framed on 09.02.2021 and out of 23 PWs, only 02 PWs have been examined and both of them i.e. PW-1 and P-2, who are the main witnesses/eye-witnesses, despite being the real brother and nephew of the deceased, have not supported the prosecution version.

Lastly, counsel for the petitioner has submitted that the Sessions Judge has declined the prayer for bail by considering the fact that the petitioner is involved in 03 more FIRs, however, it is stated that the petitioner stands acquitted in two cases i.e. FIR No.167 and FIR No.269 and a cancellation report has been filed with regard to FIR No.476 as mentioned in the petition itself.

Counsel for the State, however, has filed the Custody Certificate which reflects that the petitioner is facing the trial in FIR No.36 registered under Section 395 IPC in which he is on bail.

Counsel for the State has also submitted that as per the report of FSL, Karnal, there is matching of the bullet with the recovered weapon and the scientific report supports the prosecution version.

In reply, counsel for the petiitoner has submitted that in the absence of any witness supporting the prosecution version, it will be a matter of trial whether he is likely to be convicted or not.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 03 yeas and 03 months; out of 23 PWs, only 02 PWs have been examined; both the witnesses i.e. PW-1 Sudesh, who is real brother of the deceased and PW-2 Narbir, who is real nephew of the deceased, who are referred to as eye-witnesses of the incident, have not supported the prosecution version and have clearly stated that no occurrence took place in their presence and they do not know who has committed the murder of Vijay Pal as well as in view of the fact that the conclusion of the trial will take some time, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found indulged in extending any threat to the remaining prosecution witnesses, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

04.07.2023

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Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No