

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-23655-2022

Date of Decision:-13.01.2023

Deepak.

.....Petitioner.

Versus

State of Haryana.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. R.S. Randhawa, Advocate for the Petitioner.

Mr. Kanwar Sanjiv Kumar, Assistant Advocate General,
Haryana.

Mr. Rakesh Sobti, Advocate for the Complainant.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.304 dated 28.09.2021 under Section 279, 304-A IPC registered at Police Station Mundkati, District Palwal, Haryana in which later on offences under Sections 302, 120-B were added and Sections 279 and 304-A IPC were deleted.

2. The brief facts of the case are that initially the FIR came to be registered at the instance of one Mahender who stated that his brother Gajender Singh son of Amar Singh was going for his duty to Gurdana on his motor cycle No.HR-52B-0956. From behind, one car came speeding being driven in a rash and negligent manner and struck the bike of his brother. He (complainant) shouted and he asked the PCR to catch the

offending vehicle but no attempt was made for the same. Since the blood was oozing from the head of the complainant, he died at the spot. Strict action was sought against the unknown driver and also police officials.

After the registration of the FIR the investigation began. During the course of investigation the elder brother of the deceased namely Harender Singh moved an application along with a Pen Drive containing the movement of the suspected offending vehicle. As per the said application this witness had found on checking of the CCTV footage of Toll Plaza Mitrol and Gulshan Dhaba, village Khatela that a white/grey XUV car had come from the side of Hodal and when his brother (deceased-Gajender) had crossed over the toll plaza the said car sped up and deliberately dashed into his brother. It was thus stated in the application that the deceased had been killed in a planned manner.

Based on the aforementioned application, offences under Section 302 and 120-B IPC were added and Sections 279 and 304-A IPC were deleted. During the course of further investigation, Rohtash and Deepak (present petitioner) were arrested. In their disclosure statement they narrated the modus operandi of the crime and sequence of events. They revealed that in fact Pushpa wife of the deceased and Jacky son of Meghan had conspired with them (Rohtash and Deepak) to murder the deceased as Pushpa wife of deceased Gajender was having illicit relations with Rohtash who had conspired with Deepak-petitioner and had committed the offence in question.

On 10.10.2021 accused Pushpa was arrested and made a similar disclosure statement.

During the course of investigation, the call detail records of the

mobile phones of Rohtash, Pushpa, Deepak and Jacky were collected. It was found that all the accused had been talking to each other. Thereafter a report under Section 173(2) Cr.PC was submitted against the accused.

3. The Counsel for the petitioner contends that the only evidence (though inadmissible) available against the petitioner is the disclosure statement of the other accused as well as his own disclosure statement in police custody. The CDRs purportedly showing that all the accused were in contact with each other did not in anyway inculcate the petitioner. Pushpa, wife of the deceased and alleged paramour of Rohtash had been granted the concession of bail. Since the petitioner was in custody since 10.10.2021 and none of the 20 prosecution witnesses had been examined, his further incarceration was not required more so when in the other cases registered against him he has been acquitted.

4. The Counsel for the State on the other hand contends that the petitioner was sitting in the car being driven by the main accused Rohtash when it was deliberately driven into the deceased Gajender thereby causing his death. The nature of the allegations against the petitioner did not entitle him to the grant of bail. Even otherwise, there were call detail records between the accused showing the conspiracy having been hatched. He however, does not dispute the fact that other than the disclosure statement of the co-accused as also that of the petitioner all in police custody and the call detail records, there is no other evidence against the petitioner.

The Counsel for the complainant has vehemently opposed the bail application. He contends that the petitioner does not deserve the concession of bail looking at the grave nature of the allegations levelled against him as also the evidence on record.

I have heard learned Counsel for the parties.

Admittedly, the petitioner is not named in the FIR. During the course of investigation, the accused came to be arrested and it is in the disclosure statement of the co-accused that the petitioner was travelling in the offending vehicle along with other accused. The veracity of the said disclosure statement as also CDRs would be established during the course of Trial.

At this stage, petitioner is in custody since 10.10.2021 and none of the 20 cited prosecution witnesses have been examined. Pushpa the alleged paramour of Rohtash and the wife of the deceased has been granted bail vide order dated 24.02.2022 by Additional sessions Judge, Palwal. In the other cases registered against the petitioner he stands acquitted. As such, the further incarceration of the petitioner was not required.

Thus, without commenting on the merits of the case, the petitioner-**Deepak** son of Sh. Daya Ram is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, concerned.

The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing that he is not involved in any other crime other than the present case.

If the petitioner or his family members/associates make any attempt to contact/threaten/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted vide this order.

In addition, the petitioner (or any person on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the

Trial Court. The same would be liable to be forfeited in accordance with law in case of the absence of the petitioner from the Trial without sufficient cause.

Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

January 13, 2023
Vinay

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