

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.M-24235 of 2023 (O&M)
Date of Decision: May 30, 2023

Jograj @ Bablu
...Petitioner

VERSUS

Union Territory, Chandigarh
...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Vivek Kathuria, Advocate,
for the petitioner.

Mr.A.M.Punchhi, Addl. Public Prosecutor,
for the respondent-U.T. Chandigarh.

ARCHANA PURI, J.

The petitioner has filed this second petition under Section 439 Cr.P.C. for seeking regular bail in case FIR No.76 dated 28.03.2019 under Sections 302 IPC, Police Station Sector 34, Chandigarh.

Earlier, CRM-M-30582-2020 was filed for seeking regular bail. However, the same was dismissed as withdrawn, vide order dated 26.10.2020.

Heard.

The FIR in question was registered at the instance of complainant Harshdev so/ Shri Ram. As per version of the complainant, he had retired from Chandigarh Health Department and had purchased House No.177/2, Sector-45-A, Chandigarh, wherein, he had engaged labour for

renovation. On 28.03.2019, in the morning, the complainant had gone to his newly purchased house to make arrangement of drinking water for the labour. As soon as, he started climbing stairs leading from House No.177/1 to House No.177/2, at about 7.30 a.m., he saw one lady was lying on the stairs and blood had oozed out from her head. The police had soon reached the spot and on the basis of the statement got recorded by complainant Harshdev, FIR under Section 302 IPC was registered against unknown persons.

During the course of investigation, Ravish, son of the deceased, was associated and on his identification, Jograj @ Bablu-present petitioner was arrested from near main gate of Civil Hospital, Sector-45, Chandigarh.

During the course of police remand, on 31.03.2019, in pursuance of disclosure statement, clothes of the petitioner and one blood-stained rod were recovered. On completion of the investigation, challan was presented against the petitioner.

Learned counsel for the petitioner has assiduously submitted that the petitioner is in custody since 01.04.2019 and has suffered incarceration for more than four years. Also, it is submitted that there is no likelihood of completion of trial in near future. Out of 19 cited witnesses, still only 11 witnesses have been examined. He further submits that material witness, namely Ravish, son of the deceased, is material linkage, who allegedly connects the petitioner to the occurrence in question, but however, he has not been examined, despite several efforts made, at the instance of the prosecution as well as the Court. Learned counsel for the petitioner submits that trial, as such, is proceeding at snail's pace. To so emphasize, he has drawn the attention of the Court to the chronology of the dates, as to when

the case was taken up by the trial Court and the gist of the proceedings, so conducted, has been given in the petition itself. It is submitted that length of custody is material consideration to be seen. Thus, summing up his arguments, learned counsel for the petitioner submits that long incarceration, being faced by the petitioner also hampers his right of speedy trial under Article 21 of Constitution of India. As such, he made a prayer for grant of regular bail to the petitioner.

On the other hand, learned counsel for respondent-U.T. Chandigarh has resisted the claim for regular bail. He submits that allegations are of grave nature. He further submits that material witnesses have since been examined and only 6 witnesses remain to be examined and he assured about residue witnesses to be examined expeditiously. As such, he made a prayer for dismissal of the present petition.

Status report has been furnished at the behest of respondent-U.T. Chandigarh. Perusal of the same reveals that challan was presented in the Court on 25.06.2019 and charges were framed on 11.09.2019. Out of 19 cited witnesses, 11 witnesses have been examined, 2 have been given up and 6 witnesses remain to be examined. Also, it is specifically stated that material witnesses have been examined and the trial shall be concluded in the next 2-3 months.

However, the dates and events, as detailed in the petition reveals that presence of material witness Ravish, who is son of the deceased, is not being procured by the prosecution and it was on 05.07.2021, a report was received about PW Shamsher and PW Ravish not traceable and thereupon, they were ordered to be summoned throughailable warrants.

Time and again, the case was adjourned to procure their presence. After

multiple adjournments, non-bailable warrants were issued to secure their presence on 30.03.2022 and despite efforts made, they were reported to be untraceable and since then, the non-bailable warrants were being issued, time and again. Lastly, on 28.04.2023, non-bailable warrants of PW Shamsher and PW Ravish were received back unexecuted with the report that they are not residing at given addresses and fresh non-bailable warrants were issued.

Thus, from the seriatim of adjournments, as given in the petition, it is evident that there is no fault on the part of the petitioner for delay of the trial. The fact remains that trial is proceeding at snail's pace. The prosecution seemingly is unable to procure the presence of Ravish, at whose instance, the petitioner was arrested in the present case.

In the given circumstances, there is no likelihood of conclusion of the trial within 2-3 months, as submitted by learned counsel for respondent-U.T. Chandigarh. As such, the petitioner cannot be made to face incarceration, indefinitely.

Perusal of the custody certificate, which has been placed on record reveals about the petitioner to be not having criminal background. He is not involved in any criminal case, pending or decided.

In view of the aforesaid circumstances, without expressing any opinion on merits or demerits of the rival submissions and considering the facts and circumstances brought on record, the case for bail is made out. Hence, the present petition is allowed and petitioner Jograj @ Bablu is ordered to be released on bail, subject to furnishing bail bonds in the sum of ₹2,00,000/-, with one surety, in the like amount, to the satisfaction of the

trial Court/Duty Magistrate concerned. However, trial Court shall be at

liberty to impose any further condition, as it may deem appropriate,
considering the circumstances of the case.

May 30, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No