

214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHCRM-M-24476-2023
Date of Decision:02.08.2023

Mulkh Raj @ Bhutto ...Petitioner

Vs.

State of Punjab ...Respondent

Coram : Hon'ble Mr. Justice N.S.ShekhawatPresent: Mr.Jasraj Singh, Advocate for
for the petitioner.

Mr.M.S Bajwa, DAG, Punjab.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 439 Cr. PC with a prayer to grant regular bail to him in case FIR No.02 dated 04.01.2015 under Sections 302, 307, 452, 326, 506, 148 and 149 of IPC, registered at Police Station Chabbewal, District Hoshiarpur (Annexure P-1).

2. As per the case of the prosecution, the FIR in the present case was registered on the basis of the statement made by Udham Kaur, who stated that her son Sandeep Kumar @ Sonu had solemnized love marriage with Khushboo, daughter of Sodhi Ram, her neighbour. Her son and daughter-in-law lived in Kharar for about two months and thereafter, they lived in a rented accommodation at Hoshiarpur for about one month. On 30.03.2015, Sandeep Kumar and his wife had come to meet her in the village. At about 04:00 P.M, Sodhi Ram armed with *gandasi*, Bhupinder @ Bablu armed with *datar*, Mulkh Raj @ Bhutto armed with *datar* and Avinash Chander @ Sabi armed with *datar*, came after her. Sodhi Ram exhorted that her family had bring dis-repute

to them and gave a blow of *gandasi* on the head of her husband. The other accused also caused injuries with their respective sharp edged weapons on the head and other parts of the body of her husband Parkash Chand, her son and her daughter-in-law. She raised a noise to save them and on hearing her noise, Lakhvir Singh Panch and Satnam Singh reached at the spot and all the assailants fled away from the spot with their respective weapons. All the three injured were shifted to Civil Hospital, where her son and daughter-in-law succumbed to the injuries and her husband was still under the treatment.

Learned counsel for the petitioner contends that the petitioner had not participated in the alleged occurrence and has been falsely implicated in the present case, being the brother of Sodhi Ram, co-accused. He further contends that the petitioner is stated to be armed with *datar* and only general and vague allegations have been levelled by the complainant against all the accused. Learned counsel further contends that the petitioner is in custody since 04.11.2016 i.e for a period of about 06 years and 08 months as an undertrial and the prosecution has only examined 16 witnesses out of total 34 witnesses. Thus, the conclusion of the trial may take quite a long time. Learned counsel further contends that vide the judgment dated 29.10.2016 passed by the Court of Learned Additional Sessions Judge, Hoshiarpur (Annexure P-4), 03 accused were ordered to be acquitted, while 05 accused were ordered to be convicted by the learned Trial Court. Learned counsel further contends that the co-accused Sandip Kumar @ Seepa and Avinash Chander @ Sahbi were also convicted in the present case, however, vide the orders Annexures P-5 and P-6 respectively, the sentences imposed on them have already been ordered to be suspended by this Court. Learned counsel further contends that earlier also he had applied for

bail, but the same was withdrawn on 17.09.2021 from this Court. However, even after withdrawal, only 05 witnesses have been examined and the trial has not progressed much.

On the other hand learned State counsel has vehemently opposed the prayer made by the present petitioner in the instant petition on the ground that there are specific allegations against the petitioner and he had caused the murder of son as well as the daughter-in-law of the complainant, who had performed the marriage against the wishes of the family of the petitioner.

I have heard learned counsel for the parties and with their able assistance; I have perused the record.

In the present case, no doubt that the petitioner is charged with a serious offence. In the considered opinion of this Court, “seriousness of the charge” is no doubt one of the relevant considerations while considering the bail applications of an accused, but that is not the only test or the factor. The other factors, which also require to be taken note of are; the delay in holding the trial, chances of tampering with the prosecution evidence, fleeing from the process of law, antecedents of the accused, likelihood of repetition of crime etc. Even the grant or refusal to grant bail lies within the discretion of the Court. The primary purpose of the bail in a criminal trial is to relieve the accused of imprisonment and to relieve the State of the burden of keeping him, pending trial and at the same time to keep the accused constructively in the custody of the court to assure that he will submit to the jurisdiction of the Court and be an attendance thereon, whenever his presence is required. Further, it is equally settled that when undertrial prisoners are confined to jail for an excessively long period, their right under Article 21 of the Constitution of India stands violated.

Every accused, no doubt, is entitled to speedy trial and speedy justice as per the provisions envisaged under Article 21 of the Constitution of India. Consequently, it is never in the interest of justice, that the accused should be in jail for an indefinite period. In the present case also, no doubt the present petitioner is charged with a serious offence, but that, by itself, should not deter this Court from releasing the petitioner on bail, when he has already completed the custody of about 06 years and 08 months as an undertrial prisoner and only 16 witnesses have been examined out of 34 witnesses. Apart from that, his co-accused were convicted by the Trial Court and vide the orders Annexures P-5 and P-6 Sandip Kumar @ Seepa and Avinash Chander @ Sahbi have been granted the concession of suspension of sentence, during the pendency of their respective appeals.

Thus in view of the above discussion, the present petition is allowed. The petitioner is ordered to be released on bail pending trial on his furnishing bail bonds and surety to the satisfaction of the concerned trial Court/ Duty Magistrate/Chief Judicial Magistrate with the following conditions:-

- (i) *The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.*
- (ii) *The petitioner shall remain present before the learned Trial Court on the date fixed for the hearing of the case. In case, he want to remain absent, he shall seek prior permission of the Trial Court.*
- (iii) *He shall surrender his passport, if any (if not already surrendered), and in case he is not a holder of the same, he shall swear to an affidavit. If he already surrendered the passport, that fact should also be*

supported by an affidavit.

(iv) *The petitioner shall appear before the SHO Police Station Chhabewal, District Hoshiarpur on every Ist Monday of English Calender Month and his presence shall be marked in the Rojnamcha of the Police Station.*

02.08.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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