

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

224

CRM-M-27312 of 2023

Date of Decision:14.07.2023

Gaurav @ Kaicha

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Aayush Gupta, Advocate,
for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.0099 dated 26.04.2020, under Sections 302, 34 IPC (Sections 323, 216, 120-B IPC added later on), registered at Police Station Nissing, District Karnal.

2. It has been argued by learned counsel for the petitioner that the petitioner is in custody from 28.04.2020 which is about 3 years and 2½ months. He submitted that the present case is based upon circumstantial evidence and as per the allegations, the petitioner and the other co-accused took away the deceased towards the canal and thereafter killed him. He further submitted that earlier the petitioner had filed a petition for grant of bail vide CRM-M-12082 of 2022 which was dismissed by this Court on 28.03.2022 and now the present petition has been filed after about 1½ years. While referring to the aforesaid order, he submitted that

even at that point of time the complainant was only examined in-chief and he was not cross-examined and the bail petition was dismissed. He submitted that now 1½ years has elapsed but the complainant is not coming forward and rather bailable warrants were issued against him by the learned trial Court but he is evading the process of the Court. He further submitted that be that as it may, the petitioner has already faced incarceration for more than three years and because of the fault of the complainant that he is not appearing before the Court for his cross-examination, that the present trial has been delayed and therefore the petitioner may be considered for the grant of regular bail.

3. On the other hand, Mr. Vishal Kashyap, learned DAG, Haryana has submitted that it is correct that the petitioner has already faced incarceration for about 3 years and 2½ months and the complainant has not come forward for cross-examination despite non-bailable warrants being issued against him. He further submitted that however the petitioner is involved in one more case which is a case of simple injury.

4. I have heard learned counsel for the parties.

5. It is a case where the petitioner has already faced incarceration for about 3 years and 2½ months. As per learned counsel for the parties, the complainant was examined in-chief more than 1½ years ago but now he is not appearing before the Court for cross-examination despite bailable warrants being issued against him, with the result that the trial of the case has been delayed. The involvement of the petitioner in other case under Sections 279, 283, 337 and 338 IPC would not disentitle the petitioner for grant of bail in the present case.

6. Therefore, considering the total custody of the petitioner which is

about 3 years and 2½ months, the petitioner deserves the concession of grant of regular bail. Consequently, the present petition is allowed. The petitioner shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

7. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of the present petition.

(JASGURPREET SINGH PURI)
JUDGE

July 14, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No