

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

Sr. No.216

CRM-M-28359-2023

Date of Decision : July 03, 2023

Subash @ Basu @ Rahul

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Chander Pal Tiwana, Advocate, for the petitioner.

Mr. Rahul Mohan, DAG, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner is seeking the concession of bail under Section 439 of the Code of Criminal Procedure, 1973 in case FIR No.149 dated 04.11.2019 lodged under Sections 302 and 201 of IPC (Section 120-B IPC added later on) registered at Police Station Titram, District Kaithal.

2. Learned counsel for the petitioner submits that subsequent to the withdrawal of the previous petition wherein similar relief had been sought, material witnesses including the complainant have been examined during the trial and the complainant has not supported the case of the prosecution as a result of which he had been declared hostile. Learned counsel, in support, has drawn the attention of this Court to the testimony of the complainant, annexed as Annexure P-2 wherein the factum of the complainant having turned hostile stands duly reflected. It has been further submitted that the petitioner has been in custody for more than three and a half years having been arrested on 05.11.2019 and there is no likelihood of the trial concluding in the near future as prosecution evidence has not yet

concluded. Learned counsel has further submitted that co-accused Pinki has since been extended the concession of bail by this Court vide order dated 30.01.2023 annexed as Annexure P-4.

3. Learned State counsel while opposing the prayer and submissions made by learned counsel for the petitioner has not been able to dispute that the complainant, who is the brother of the deceased, had indeed not supported the case of the prosecution and resultantly, was declared hostile. However, he submits that the petitioner was the paramour of the wife of the deceased and it was precisely for this reason both the petitioner and co-accused Pinki conspired to eliminate the deceased. He further submits that an Alto car in which the deceased was taken to the place of occurrence by the petitioner was also recovered from him along with a cutter used in the crime. It has still further been submitted that from the mobile phone locations of the petitioner it stands revealed that he was present near the place of occurrence at the relevant time.

4. I have heard learned counsel for the parties and perused the material placed on record.

5. The petitioner has been in custody since 05.11.2019. It is a case resting on circumstantial evidence and the motive alleged to commit the crime in question was spelt out in the FIR lodged by the complainant. However, as not disputed by the learned State counsel, the complainant while stepping into the witness box as PW-6 had not supported the case of the prosecution as a result of which he was admittedly declared hostile.

6. In the facts and circumstances as enumerated hereinabove coupled with the fact that, prosecution evidence has not yet concluded, in addition to the long incarceration of the petitioner, the instant petition is

allowed. The petitioner be admitted to bail to the satisfaction of the Trial

Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

July 03, 2023

Ankur

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No