

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

CRM-M No.30210 of 2022

Date of decision: 21st August, 2023

Sunil

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Rakesh K. Lathwal, Advocate for the petitioner.

Mr. Rahul Mohan, Sr. Dy. Advocate General, Haryana
for the respondent/State.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is seeking the concession of bail under Section 439 Cr.P.C. in case FIR No.398 dated 05.09.2020 under Sections 302, 34 IPC registered at Police Station Kharkhoda, District Sonipat. This is second petition filed by the petitioner.

2. Learned counsel for the petitioner inter alia submits that after withdrawal of the previous petition on 09.07.2021, wherein similar relief had been sought by the petitioner, all the material witnesses had been examined. While drawing the attention of this Court to the deposition of Pardeep PW-1 (Annexure P-4) who was alleged to be a witness of last seen, as well as testimony of PW-2 Birmati (Annexure P-5), mother of the deceased, who had spelt out the motive to commit the crime, learned counsel submits that both these witnesses

had not supported the case of the prosecution and as a result of which they were declared hostile. Learned counsel submits that it was thus, evident that a false and fabricated case had been planted upon him. It has further been submitted that the petitioner has now been in custody since 16.09.2020 and after charges were framed on 05.04.2021, only 8 prosecution witnesses out of total 30 cited had been examined so far, and thus, there was no likelihood of the trial concluding in the near future. It has also been submitted that since the material witnesses had failed to support the case of the prosecution, further incarceration of the petitioner in the circumstances, would serve no useful purpose.

3. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, on instructions from ASI Pawan, has not been able to controvert that both the material witnesses i.e. PW-1 Pardeep and PW-2 Birmati had been declared hostile during trial. He, however, submits that a perusal of the FIR reveals that it was the deceased who had himself told the complainant that he had been assaulted by all the accused including the petitioner; it was on account of the injuries inflicted, he subsequently died in the hospital where he was taken for his treatment. Learned State counsel has further submitted that the next date of hearing fixed before the trial Court is 11.10.2023, when some more prosecution witnesses have been summoned to depose.

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

5. The petitioner has now been in custody for almost three years, having been arrested on 16.09.2020 and prosecution evidence shall take considerable time to conclude as 22 prosecution witnesses remain to be examined. In addition, both the material witnesses including PW-2 Birmati, who is none other than the mother of the deceased and also the witness, who spelt out the motive to commit the crime, had been declared hostile during trial. In the facts and circumstances, as enumerated hereinabove, this Court, thus, deems it fit to extend the concession of bail to the petitioner. The petition as such is allowed and the petitioner is admitted to bail to the satisfaction of the trial Court/Duty Magistrate. 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.

(MANJARI NEHRU KAUL)
JUDGE

August 21, 2023
rps

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