

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-32484-2022 (O & M)****Date of decision: 15.03.2023**

Sukhjinder @ Sukha @ Sukhwinder

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDIPresent: Mr. Keshav Pratap Singh, Advocate,
for the petitioner.

Ms. Ramta Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.245 dated 07.10.2021 under Sections 302 IPC (Sections 120-B, 148 and 149 IPC added later and Section 34 IPC deleted) and Sections 25 of the Arms Act, 1959 registered at Police Station Bhuna, District Fatehabad.

2. The brief facts of the case are that one Somnath got recorded his statement to the effect that he had two sons, namely, Rajesh alias Raja, (elder son) and Pankaj Kumar (deceased, younger son). On 06.10.2021, he alongwith his younger son-Pankaj Kumar were coming back to their village in their car bearing No.HR-23G-4184. At about 10.15 p.m., when they reached near the plot of Balraj, then suddenly, the tyre got punctured. When his son-Pankaj Kumar got out of the car to check the same, at that time, 2-3 unknown persons came on a motorcycle. One of them was wearing helmet and had a pistol in his hand. They all started quarreling with his son and started firing upon his son with the pistol. Out of fear when his son ran

towards the plot of Balraj through the fields, the unknown persons started

firing indiscriminately upon him due to which his son fell down. On his raising hue and cry, the villagers came to the spot and they got his son admitted at Government Hospital, Bhuna, where his son was declared dead.

Based on these allegations, the present FIR came to be registered.

3. The learned counsel for the petitioner contends that no person is named in the FIR. Thereafter, on 09.10.2021, the statement under Section 161 Cr.P.C. of Rajesh @ Raju son of Somnath was recorded wherein he stated that on account of a dispute regarding running of the liquor vends, his brother-Pankaj Kumar had been murdered by Vikram Nain son of Jaswant Singh, Jagjit @ Judge son of Balvinder, Vikram Bhambhu son of Uggarsain, Karamjit @ Golu son of Robinder Singh, Sanjay @ Sanju son of Satpal, Aman Malik son of Satyawar, Karan Singh son of Gurjit and Hanuman @ Doctor son of Om Parkash. The petitioner has not been named. The name of the petitioner figured in the disclosure statement of Karamjeet @ Golu only. Subsequently, the petitioner was arrested and during the course of the Trial, the statement of Somnath (complainant) was recorded wherein he has admitted that no Test Identification Parade had ever been conducted in his presence and he had identified the accused in the Court for the first time that day through Video Conferencing. He contends that this identification for the first time has no evidentiary value. He further contends that no recovery has been effected from the petitioner. Since the petitioner was in custody since 25.10.2021 and only 03 of the 22 prosecution witnesses had been examined (including two material witnesses), the Trial was not likely to be concluded anytime soon, and therefore, the petitioner was entitled to the grant of bail.

4. The learned counsel for the State, on the other hand, while

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Deputy Superintendent of Police, District Fatehabad (Haryana) dated 24.11.2022 admits that no one is named in the FIR. During the course of investigation, the name of the accused figured. Various recoveries of weapons, mobile phones, etc. have been effected from the co-accused. He, however, admits that so far as the petitioner is concerned, he is not named in the FIR nor in the statement under Section 161 Cr.P.C. of Rajesh @ Raju, brother of the deceased but is named in the disclosure statement of a co-accused, namely, Karamjit @ Golu. He also admits that no recovery whatsoever has been effected from the petitioner. He, however, in addition, contends that the petitioner had two other cases registered against him bearing FIR No.53 dated 17.03.2021 under Section 61 of the Excise Act, 1914 registered at Police Station Bhuna and FIR No.221 dated 09.09.2021 under Sections 307, 120-B, 34 IPC and Section 25 of the Arms Act, 1959 registered at Police Station Bhuna, and therefore, his criminal antecedents did not entitle him to the grant of bail.

5. I have heard the learned counsel for the parties at length.

6. Admittedly, the petitioner is not named in the FIR or in the statement under Section 161 Cr.P.C. of Rajesh @ Raju @ Raja, brother of the deceased-Pankaj Kumar. Two main witnesses, namely, Somnath (complainant) and Rajesh @ Raju @ Raja stand examined. Whether the evidence against the petitioner is sufficient to affix liability upon him would be a matter of adjudication during the course of Trial. The petitioner is in custody since 25.10.2021 and only 03 of the 22 prosecution witnesses have been examined so far. As such, the Trial of the present case is not likely to be concluded anytime soon. Even otherwise, in FIR No.221 dated 09.09.2021 under Sections 307, 120-B, 34 IPC and Section 25 of the Arms

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for the concession of bail as he is in custody in the present case whereas in FIR No.53 dated 17.03.2021 under Section 61 of the Excise Act, 1914 registered at Police Station Bhuna, he has been granted the concession of bail.

7. In view of the aforementioned circumstances, no useful purpose would be served by keeping the petitioner incarcerated.

8. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Sukhjinder @ Sukha @ Sukhwinder is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. The petitioner shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any case other than the case(s) referred to hereinabove.

10. If any attempt whatsoever is made by the petitioner and/or his family members/friends to contact/threaten/intimidate any of the witnesses of the present occurrence, the State/complainant shall be at liberty to move an application for cancellation of bail granted vide this order.

11. In addition, the petitioner (or someone else on his behalf) shall prepare an FDR in the sum of Rs.2,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from Trial without sufficient cause.

(JASJIT SINGH BEDI)
JUDGE

March 15, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No