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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-33219-2023 (O&M)

Date of decision: July 18, 2023

Jaipal @ Toni

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. R.N. Lohan, Advocate for the petitioner.

Mr. Karan Garg, AAG Haryana.

ARUN MONGA, J. (ORAL)

Petitioner seeks bail in case bearing FIR No.120 dated 16.04.2021, registered under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC'), at Police Station Bawal, District Rewari.

2. Per prosecution version, on 15.04.2021, Naresh Singh, younger brother of complainant-Manipal had gone to his duty on his motorcycle, but did not return home. His dead body was found lying in between Baba Guggapeer Temple and Anganwari Centre, near Bus stand. His motorcycle was found lying on the body of his brother and his face and forehead had been hit with brick-bat blow. Complainant alleged that his brother-Naresh Singh (since deceased) used to sometimes take liquor with Sandeep, Bijender Singh, Jaipal @ Toni (petitioner), Raju, Ran Singh, Rajpal and Raj Singh. One night prior also, he took liquor with the aforementioned persons. Naresh Singh was murdered by them after making him to consume liquor and by giving brick-bat blows on his forehead and face. An FIR was registered in this regard. Petitioner is in custody since 17.04.2021.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. He submits that there is no admissible evidence against the petitioner and he has been arrested without any evidence. No injury has been attributed to the petitioner. Prosecution case is merely based on call details of two mobile phones

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both those phones do not belong to any of them as per evidence relied upon by the prosecution. He submits that neither FIR was registered on the basis of first information given by Gajender Singh Chauhan nor was he even cited as a witness for the reasons best known to the prosecution. There is no evidence against the petitioner. Nothing is to be recovered from him. Petitioner is not involved in any other case.

3.1. Learned counsel for the petitioner argues that neither is there any allegation of the petitioner having been seen last together with deceased nor was he present on the scene of occurrence. On the contrary, he points out that deceased was found lying dead on the road with his motorcycle on top of his body. That is indicative that even assuming, though not admitting, as is alleged that he had consumed liquor, along with petitioner and others, but after he left the place, *en route*, he met with an accident which caused his fall from the motorcycle resulting in head injuries which is the cause of his death. It is argued that merely on the unfounded statement of the complainant, it is being given a colour of settling some score between deceased and petitioner which is nothing but a concocted story to fabricate a motive on the part of petitioner, where none exists.

4. On the other hand, learned State counsel, on instructions from ASI Beer Singh opposes the bail petition. He submits that petitioner has committed a serious offence. Petitioner, if enlarged on bail, may tamper with the evidence and/ or influence the witnesses. Investigation is complete and challan has been presented and even charges were framed on 11.08.2021. He submits that out of 22 witnesses, 11 have been examined. Petitioner is involved in 9 other cases.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

6. It transpires that since trial has commenced, petitioner is not required for custodial interrogation and he is being kept in judicial custody only on unfounded suspicion of tampering with the evidence and/ or influencing the witnesses. Trial is proceeding further at a snail pace. There are total 22 witnesses and out of them, 11 have been examined.

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7. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been languishing in jail for more than 2 years in preventive custody now, being behind bars since 17.04.2021. Petitioner is stated to be 40-year old unmarried person. It is stated that he is the sole bread winner of family of his brother who unfortunately died on an earlier occasion and has to look after his sister-in-law and minor children of his brother. In his absence, they all are living in sheer penury.

8. Considering the overall scenario and without commenting on the merits of the case, I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody and the instant petition deserves being allowed..

9. Accordingly, petitioner is ordered to be released on bail, if not required in any other case, on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where his case is being tried and in case its Presiding Officer is not available, then to the satisfaction of learned Duty Judge, as the case may be.

10. In case, petitioner is found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.

11. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing/disposal of the instant bail petition alone and learned trial Court shall proceed further in accordance with law without being influenced with this order.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 18, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No