

CRM-M-36312-2023 (O&M)

225

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-36312-2023 (O&M)

Date of decision: August 02, 2023

Mehboob

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Ankit Yadav, Advocate petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner before this Court seeks his release as undertrial in this second foray, in a case bearing FIR No.83 dated 09.02.2020, registered under Section 302 of the Indian Penal Code, 1860 (for short 'IPC'), (Section 25 of Arms Act, 1959 added later on) at Police Station, Sadar Ballabgarh, District Faridabad. First petition was dismissed vide order dated 02.02.2022 by a co-ordinate Bench of this Court.

2. Per prosecution version, on 04.02.2020, complainant's husband, namely Sanjay had gone for labour work in the morning but did not return. While searching, complainant reached Trauma Centre of AIIMS, New Delhi on 07.02.2020 where she identified dead body of her husband. On enquiry, she found that her husband was murdered by the petitioner. An FIR was registered in this regard. CCTV footage of the area was collected. During investigation, Section 25 of Arms Act, 1959 was added later on. Petitioner was thus arrested on 10.02.2020.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. He further submits that petitioner has nothing to do with the alleged offence. Name of the petitioner has been added only on the basis of suspicion without any iota of evidence or without witnesses of the incident. FIR in question was

CRM-M-36312-2023 (O&M)

registered after a delay of 5 days of the missing of deceased from his house on 04.02.2020. Petitioner was arrested on 10.02.2020 and on the basis of his disclosure statement, which is inadmissible in evidence, recovery of country made pistol was allegedly effected from him.

4. Learned counsel for petitioner further refers to statement of Smt. Meena (PW-1), mother of deceased, annexed as Annexure P-1 to contend that she categorically deposed that incident did not take place in her presence. Further, PW4-Reshma (complainant) was declared hostile. He further submits that all the material witnesses have turned hostile. There is no evidence that shows involvement of the petitioner in the crime. Also contends that petitioner is not involved in any other case.

5. Per contra, learned State counsel, assisted by SI Rakesh, opposes the bail petition. He submits that petitioner has committed a serious offence. He further states that out of total 17 witnesses, 14 have been examined and from rest of 3 witnesses, one has been given up and only 2 remained to be examined. He further states that per FSL report, pistol and bullet fired from it matched with each other. There is likelihood that petitioner may tamper with the evidence and influence the witnesses, in case he is released on bail.

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

7. Testimony of the witnesses is almost at the fag end. In the premise, in case petitioner is let out at this stage, possibility of his influencing/ intimidating the witnesses who are yet to depose, cannot be ruled out. In the premise, at this stage, no concession is being accorded to the petitioner.

8. As an upshot, instant bail petition is disposed of with liberty to the petitioner to file fresh one before learned Court below after the conclusion of the testimony of rest of the witnesses. It is expected of the prosecution to take steps to produce unexamined two witnesses and learned trial Court not to grant unnecessary adjournments. Needless to say that as and when fresh bail petition is filed, learned

CRM-M-36312-2023 (O&M)

Court below shall decide the same on its own merits based on material available on Court file without being influenced by dismissal of instant petition.

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

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

(ARUN MONGA)
JUDGE

Augst 02, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No