

CRM-M-36337-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 09.10.2023

Mehboob

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Vishal Goel, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (Oral)

Following the denial of bail by learned trial court, the petitioner is now before this Court seeking his release as an undertrial in a case with FIR No. 987 dated 09.11.2022, registered under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') (later on Section 302 IPC deleted and Section 304 IPC added), at the Chandni Bagh, Police Station in Panipat.

2. According to the prosecution's account, on November 9, 2022, the complainant, Tajudeen, alleged that on the evening of November 7, 2022, his brother, Azrudeen (now deceased), had gone to the house of their aunt, Shamsheeda, located in Ludo Factory. Around midnight, at approximately 12:00 AM, his cousin, Feroze, informed him over the phone that accused Aasif was quarreling with Azrudeen. When the complainant arrived at the scene, Azrudeen was in severe pain due to injuries to his abdomen. Feroze explained to the complainant that accused Aasif, along with his father, brother, and uncle Mehboob (the petitioner), had inflicted these injuries on Azrudeen. On November 8, 2022, Azrudeen was admitted to Civil Hospital, Panipat, due to the injuries sustained during the assault. He was later referred to Kalpana Chawla Medical College, Karnal, where he ultimately succumbed to his injuries. Consequently, an FIR was

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registered based on Tajudeen's statement. The petitioner, Mehboob, was taken into custody on November 18, 2022, and has remained incarcerated since then.

3. Among other arguments, it is contended that neither the complainant nor any of the prosecution witnesses, whose statements have been recorded under Section 161 Cr.P.C., attributed any specific role to the petitioner. Even the disclosure statement of the petitioner does not reveal any role for which charges under Section 304 IPC can be invoked against him. Furthermore, it is submitted that, at most, the petitioner happened to be present along with other co-accused at the time of the unfortunate incident that led to the altercation between the co-accused and the deceased, who died due to injuries inflicted during the said altercation.

3.1 The learned counsel for the petitioner would further contend that, as per the version in the FIR, after the scuffle, the deceased was neither immediately taken to the hospital nor provided with any medical treatment. He was taken to the hospital on the following day after the alleged incident. According to him, the deceased had died three days after the incident, raising serious doubts that he died due to the alleged injuries sustained during the occurrence. The prosecution's narrative of the case appears to be concocted.

3.2 Furthermore, it is submitted that the FIR was registered based on a concocted version provided by the complainant. The petitioner is neither named in the FIR nor connected with the alleged offense.

3.3 The petitioner's counsel also contends that there is no need for further custodial interrogation of the petitioner, as there is nothing left to be recovered from him. Moreover, there is no indication that the petitioner would tamper with evidence or influence prosecution witnesses.

3.4 He further submits that the petitioner has been in custody since November 18, 2022, and the challan has already been presented. The conclusion

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of the trial will take a long time; thus, keeping the petitioner behind bars would not serve any useful purpose.

4. On the contrary, the learned State counsel strenuously opposes the petition, expressing concerns about the possibility of the petitioner fleeing from trial proceedings if granted bail. He submits that the allegations against the petitioner are serious as petitioner along with co-accused inflicted multiple injuries on the deceased. He, however, admits that petitioner is not involved in any other case.

5. I have heard the rival arguments and reviewed the case file.

6. In response to a query from the Court, it transpires that the investigation against the petitioner has been completed, and charges were framed on May 01, 2023. At this stage, the allegations against the petitioner are subject to trial. Of the twenty two prosecution witnesses, none has been examined so far. The trial's progress has been slow, and it is anticipated to take a considerable amount of time. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since November 18, 2022, for more than 11 months.

7. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that he might tamper with evidence or influence witnesses.

8. The petitioner is stated to be family person with wife and one minor child. He is the sole provider for his family, which is currently living in dire poverty in his absence. As a responsible family man with a clean record and a stable residence, the petitioner is unlikely to pose a flight risk or evade trial proceedings.

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

10. Accordingly, petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where his case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

11. In case, petitioner is found 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.

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

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

(ARUN MONGA)
JUDGE

October 09, 2023

Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No