

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

228

2023:PHHC:102525

CRM-M-37543-2023

Date of decision: August 8<sup>th</sup>, 2023

Devender Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Ishnoor Singh, Advocate  
for Mr. Vikram Singh, Advocate  
for the petitioner.

Mr. Rahul Mohan, Senior Deputy Advocate General,  
Haryana.

**MANJARI NEHRU KAUL, J. (ORAL)**

The petitioner is seeking the concession of bail under Section 439 of the Code of Criminal Procedure, 1973 in case FIR No.109 dated 14.05.2020 under Section 302 of the Indian Penal Code, 1860 registered at Police Station City Safidon, District Jind.

Learned counsel for the petitioner submits that the case in hand is based upon eyewitness account, however, both the material witnesses i.e. the complainant (mother of the deceased-Bhupender) as well as PW-2 Sandeep Kumar alleged eyewitness while stepping into the witness box had not supported the case of the prosecution, as a result of which they were declared hostile. Learned counsel in support has drawn the attention of this Court to the deposition of both these material witnesses, which has been annexed as Annexures P-1 and P-2. He, thus, submits that it is evident that a false and fabricated case has been planted upon the petitioner. Learned counsel has further urged that since 12 prosecution witnesses still remain to be examined and the

petitioner has been in custody for more than three years having been arrested on 14.05.2020, his further incarceration would serve no useful purpose.

*Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has submitted that no doubt, both the material witnesses were declared hostile during trial, however, the petitioner as well as the deceased were the sons of the complainant and it could have been for reasons but obvious that the petitioner chose to resile from her statement given to the police soon after the occurrence in question. It has also been submitted that the wife of the petitioner, who too was an eyewitness to the crime in question, has not yet been examined. Learned State counsel has further submitted that the next date fixed before the trial Court is 30.08.2023, when some more witnesses are likely to be examined.

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

The petitioner has been in custody since 14.05.2020 for allegedly stabbing his brother to death in the presence of PW-1 Sheela Devi and PW-2 Sandeep Kumar. However, it has not been disputed by learned State counsel that both these material witnesses did not support the case of the prosecution as a result of which they were declared hostile. The trial is unlikely to conclude in the near future as 12 prosecution witnesses still remain to be examined.

In the facts and circumstances as enumerated hereinabove, the instant petition is allowed. The petitioner be admitted to bail to the satisfaction of the Trial Court/Duty Magistrate concerned. 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.

**August 8<sup>th</sup>, 2023**  
*Puneet*

**(MANJARI NEHRU KAUL)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No