

CRM-M-39517-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 18.08.2023

Gopal @ Mangal Singh

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Bhupender Singh, Advocate for the 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 case bearing FIR No.698 dated 05.11.2021 (Annexure P-1), registered under Sections 302, 323, 324, 379-B read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') and Section 25 of the Arms Act, 1959 at Police Station, Civil Lines, Karnal, District Karnal.

2. Per FIR, on 04.11.2021 at about 11:00 p.m., Mahender-complainant along with Parkash (deceased), Krishan and Sanjay had gone to Railway Station to receive the mother of Sanjay. At that time, 3/4 boys who came on motorcycle, and started demanding money from Sanjay. When he refused, they inflicted a knife blow to him. In course of this scuffle, Parkash was also inflicted a knife blow on his stomach and was given kick blows by the assailants. They snatched a sum of Rs.16-17000/- from them and fled away on motorcycle along with knife. Deceased Parkash succumbed to his injuries during treatment. During investigation, petitioner alongwith co-accused were arrested on 06.11.2021.

3. Learned counsel for petitioner contends that petitioner has been falsely implicated in the present case. No role has been attributed to the petitioner in the alleged murder. Custodial statement obtained from the petitioner is not *per se* admissible, he argues. He further submits that complainant/injured Mahender Kumar and other injured witness Sanjay, who stepped into the witness box as PW-1 and PW-2 respectively (Annexures P-2 and P-3), have not supported the prosecution case. In fact, even

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eyewitness Rohit @ Sukha has already executed an affidavit dated 06.07.2023, in which he has stated that that he has no knowledge about the present case, no fight had taken place in his presence and that he does not identify the petitioner as an assailant. On that premise, learned counsel for petitioner argues that in view of the testimony already on record of the complainant and other eyewitness, who have turned hostile, it does not appear to be a case of conviction and in all likelihood, trial is likely to result in acquittal of the petitioner. Moreover, there is no other private witness left to be examined and only official witnesses remain to be examined.

4. Per contra, learned State counsel, on instructions from SI Bansi Lal, opposes the bail petition and contends that petitioner has committed serious offence. He further submits that petitioner and his co-accused suffered custodial statement admitting their complicity in the present case. Per custody certificate, petitioner is also involved in four other cases. However, he is on bail in three of those cases.

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

6. Allegations against petitioner are a matter of trial at this stage. Trial has commenced and out of 19 prosecution witnesses cited by the prosecution, 2 witnesses have already been examined but have been declared hostile. Trial is thus still likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for the past more than 01 year and 09 months in preventive custody, he being in custody since 06.11.2021. Bail allows an accused to maintain his freedom until his guilt or innocence is determined.

7. Petitioner is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/or influence witnesses. There is no probability of tampering with evidence as the same has already been seized by the investigating agency.

8. Petitioner is stated to be 28-year old family man and has wife and minor school going children to look after, who have been deprived of care and protection of their father. Due to his continued incarceration, the family is living in sheer penury in his

absence. Being a family person and having fixed abode, it is unlikely that petitioner poses a flight risk and/or will flee from trial proceedings.

9. Considering the overall scenario and 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 in instant case.

10. Accordingly, petitioner is ordered to be released on bail, in case 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 he/she is not available, before learned Duty Judge, as the case may be.

11. In case, petitioner is found to be involved or gets involved in any offence while on bail and/or any of the factual averments *qua* the testimony of witnesses and affidavit of eyewitness Rohit @ Sukha turns out to be incorrect, 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 hearing the instant bail petition 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

August 18, 2023
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No