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

CRM-M-41784-2022
Date of Decision: 31.05.2023

Nepal

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Baljeet Beniwal, Advocate
for the petitioner.

Mr. Ram Kumar Singla D.A.G., Haryana.

HARSH BUNGER, J.

Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.381, dated 17.10.2019, registered under Sections 302 and 201 of the Indian Penal Code, at Police Station Hathin, District Palwal.

2. Status report by way of affidavit of Ratandeep Bali, H.P.S., Deputy Superintendent of Police, Hathin, District Palwal on behalf of respondent/State of Haryana has been filed by learned State counsel, which is already on record.

3. Succinctly, the present FIR was registered on the complaint of one Shiv Charan s/o Roshan Lal, wherein it is stated that his youngest son-Jagbir is married to Pinki d/o Ram Singh and at the night of 16.10.2019, Pinki (daughter-in-law) of the complainant told the complainant that Jagbir (son of the complainant) at about 09:00 P.M. went out of the house and did not come back. On 17.10.2019, at about 4:30 A.M., one Ajay (villager), who goes for jogging, came to the house of complainant and told him that he saw Jagbir (son of complainant) was lying unconscious near tap, close to mand,

in the fields of Village Jainpur Road. It is further stated by Ajay (villager) that he splashed water on the face of Jagbir (son of the complainant) but he did not respond. Thereafter, the complainant along with Nepal (nephew of the complainant) went to the spot and found Jagbir (son of the complainant) lying dead on the mand. It is further alleged that there were marks of strangulation on the neck and injury marks on the body of Jagbir. Accordingly, the present FIR in question was registered.

4. Learned counsel for the petitioner submits that the petitioner has not been named in the FIR and he has been falsely implicated in the present case on the basis of call details exchanged between the petitioner and the co-accused-Pinki (wife of the deceased) by alleging illicit relationship between them. Learned counsel further submits that the petitioner had no affair with the co-accused-Pinki (wife of the deceased). It is stated that no specific injury has been attributed to the petitioner and also nothing has been recovered from him. It is further stated that although the Forensic Science Laboratory, Madhuban, Karnal (Haryana) in its report advised the Investigating Officer to take the finger prints by an expert, but the same was ignored by the Investigating Officer and the petitioner was arrested without any evidence. Learned counsel for the petitioner submits that the complainant-Shiv Charan (PW-1) has been examined, who in his statement stated that the petitioner was at home throughout the night and did not support the arrest of the petitioner (Annexure P-2). It is further submitted that other private witnesses namely Ajit Singh (PW-2), Ajay (PW-3) and Narveer Singh (PW-4) are also not supporting the case of the prosecution. Learned counsel for the petitioner submits that the co-accused (Pinki) has already been granted the concession of regular bail vide order dated 23.08.2022, passed by a Co-ordinate Bench of this Court (Annexure P-6). It

is next submitted that the petitioner is in custody since 23.10.2019 and he has undergone 03 years, 05 months and 03 days as on 27.03.2023. It is stated that investigation in the present case is complete; challan has been presented on 25.12.2019 and charges have also been framed on 08.09.2021. It is further stated that there are total 27 witnesses in the present case out of which only 4 witnesses have been examined till date and the trial is likely to take long time and no useful purpose would be served by keeping him behind the bars any further. Learned counsel for the petitioner submits that the petitioner is not involved in any other case. It is submitted that the petitioner had applied for grant of regular bail before the learned Additional Sessions Judge, Palwal which has wrongly been dismissed vide order dated 01.09.2022 (Annexure P-7). Learned counsel further submits that the petitioner herein is ready to abide by all the conditions as may be imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail is made.

5. Learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. Learned State counsel submits that during investigation of this case, the mobile No.8059218988 of co-accused (Pinki) was put on interception and she was found to be conversing with Nepal (petitioner) and they were over heard through interception talking about murder of Jagbir by them. Learned State counsel has submitted that recording of conversation was obtained and call detail records of mobile No.8059218988 (of co-accused Pinki) and mobile No.8708332588 (of petitioner) were obtained and scrutinized and it was found that both of them were continuously talking to each other, during the time of the crime and post crime. It is further submitted that the petitioner had suffered disclosure statement admitting to have committed murder of

Jagbir with the help of co-accused (Pinki). It is contended that in pursuance to disclosure, petitioner has also got recovered a scarf (dupatta) which he used to strangle the deceased-Jagbir. He also got demarcated place where the body of deceased-Jagbir was recovered. It is also contended that even Pinki had suffered disclosure and admitted murder of her husband and further demarcated the place where the body of deceased was thrown. It is submitted that although there is no eye witness to the occurrence but there is substantive evidence on file in the form of call detail records and recording of conversation which are sufficient for conviction. Learned State counsel has submitted that the petitioner is involved in heinous offence of murder and he is not entitled to the concession of regular bail. It is submitted that in case, the petitioner is enlarged on regular bail then he may tamper with the evidence and influence the material witnesses or he may abscond and flee from justice which may delay the trial; accordingly, prayer for dismissal of the petition has been made.

6. I have heard learned counsel for the parties and perused the paper book; status report as well as the custody certificate of the petitioner handed over by learned State counsel.

7. In the instant case, the petitioner is an accused in a serious, grave and heinous offence of murder of Jagbir (son of the complainant). As per the prosecution, Jagbir is stated to have been murdered by the petitioner in conspiracy with Pinki (wife of Jagbir). Although, there is no eye witness to the alleged crime; however, *prima facie*, there is sufficient material/evidence to show the complicity of the petitioner in the crime in the form of call detail records of mobile phone of petitioner and co-accused Pinki. Further it is stated that there is recording of conversation between the petitioner and co-accused Pinki, which were intercepted by the Investigating

Agency; wherein the petitioner and co-accused Pinki are stated to be talking about murder of Jagbir by them. Merely because the prosecution case rests on circumstantial evidence, the same cannot be the sole ground to release the petitioner on bail if during the course of investigation, sufficient evidence/material has been collected and a *prima facie* complete chain of events is established.

8. Hon'ble the Apex Court in ***Ramesh Bhavan Rathod vs Vishanbhai Heerabhai Makwana (2021)6 SCC 230***, observed that while deciding the application under Section 439 of the Code of Criminal Procedure, the High Court or for that matter, the Sessions Court would not launch upon a detailed evaluation of the facts on merits since a criminal trial is still to take place. It was further observed that the outcome of the application has a significant bearing on the liberty of the accused on one hand as well as the public interest in the due enforcement of criminal justice on the other and the rights of the victims and their families are at stake as well. Further, although the petitioner has been in custody since 23.10.2019; however, merely long incarceration in jail or delay in the conclusion of the trial cannot be the ground to release him on bail, especially when the petitioner is being tried for a serious and heinous offence of murder of one Jagbir (son of complainant). In ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav, 2004(2) RCR (Criminal) 254***, Hon'ble Apex Court held as under:

"The condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to

enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to be enlarged on bail, nor the fact that the trial is not likely to be concluded, in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

9. As regards the contention of learned counsel for the petitioner that the witnesses examined so far, have not supported the case of the prosecution; suffice it to say that there are other link evidence or connecting evidence worth of which is to be appreciated by the trial Court while finally deciding the case. It may not be out of place to mention here that it is the duty and responsibility of the Court to ensure that the trial in such serious and heinous offences is held in a fair manner, wherein neither the prosecution nor the persons facing the trial, are made to suffer any disadvantage and wherever any attempt is seen to win over the witnesses by making them turn hostile to the prosecution case then the Courts are required to remain alert so that any undue influence over the trial is checked.

10. At the stage of considering bail application, however, it is rather difficult for the Court to perceive any doubt about reliability or authenticity of the prosecution evidence which may come during trial.

11. Concededly, the trial in this case is undergoing. The guilt of the accused shall be determined during the trial. The apprehension expressed by the State counsel that if released on bail, there is every likelihood of the

petitioner trying to tamper with the prosecution evidence by giving threats and inducement to the prosecution witnesses and absconding even to prolong the trial, cannot be brushed aside lightly.

12. Thus in my considered view, the gravity and seriousness of offence with likelihood of petitioner tampering with the prosecution evidence and even absconding being there, no ground for grant of regular bail to the petitioner is made out. Accordingly, the present petition under Section 439 Cr.P.C. seeking grant of regular bail to the petitioner (Nepal) in case FIR No.381 dated 17.10.2019, registered under Sections 302 and 201 of IPC, at Police Station Hathin, District Palwal; is dismissed.

13. Nothing stated here-in-above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

14. However, the trial Court is directed to expedite the trial.

15. Pending application/s, if any, shall also stand disposed of.

May 31, 2023

Himani

(HARSH BUNGER)

JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No