

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40408-2023
Reserved on: 23.08.2023
Pronounced on: 14.09.2023

Hardeep Kumar @ Bheema ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Yagsimant Attri, Advocate,
for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
482	10.12.2020	City Barnala, District Barnala	302, 201, 120-B, 506 IPC

1. The petitioner incarcerated on the allegations of murder, has come up before this Court under Section 439 CrPC seeking bail.
2. Counsel for the petitioner submits that the prosecution evidence is being delayed on one pretext or the other. He further submits that the petitioner has 80% disability. He further contends that pre-trial incarceration would cause an irreversible injustice to the petitioner and family and prayed for grant of bail.
3. While opposing the bail, the State contends that the trial is at an advanced stage, and any observation made by this court might impact its outcome. He further submits that State is making every efforts to brought witnesses before the trial Court and due to defence lackadaisical approach trial is delayed.
4. That as per the prosecution version that accused/applicants along-with their co-accused persons with the common intention has caused the death of Sunny Kumar and then as per the disclosure statement on 10.12.2020 so made by Ravi Kumar accused/non-applicant that dead body, which was cut into pieces, was recovered in presence of Executive Magistrate, Barnala and entire recovery proceedings were video-graphed. He made another disclosure statement on 15.12.2020 and got recovered motorcycle allegedly used in the occurrence. During the course of investigation, mobile

phone of deceased Sunny Kumar was recovered from accused/non-applicant Kundan Parsad. That recovery of this mobile phone from accused/non-applicant and coupled with the fact that other belonging of deceased were also recovered from other co-accused persons. Another motorcycle was recovered from the possession of co-accused Rajneesh Kumar. During the investigation of accused/applicant Ram Partap alias Ram Parkash and at his instance one iron Daah was recovered from him on 13.12.2020. At the instance of accused/applicant Hardeep Kumar, one wallet of black colour was recovered from him at his instance on 15.12.2020. This wallet contained one Adhar Card bearing no. 4632-7922-1787 which is in the name of Sunny Kumar son of Anil Kumar, H.No. C-150, Street no. 4, Sekha Road, Ward no. 10, Barnala.

REASONING:

5. Since three prosecution witnesses have already been appeared and their examination-in-chief has already been recorded, as such, it shall be inappropriate for this Court to appreciate their evidence and if it does so, it might affect the case of prosecution or the defence. There is no settled law that a person, who is 80% disable, cannot commit the murder. Once the petitioner takes up the plea of disability, the burden under Section 106 of Indian Evidence Act shift upon him to explain that why his disability incapacitated him from committing the alleged crime.

6. Given above, the petitioner fails to make a case for bail.

7. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

The petition is dismissed. All pending applications, if any, stand closed. However, considering the petitioner's right to speedy trial coupled with the pre-trial incarceration, this court requests the concerned trial court to make all endeavours to conclude the trial by Jan. 31, 2024, of which the prosecution evidence be completed by Nov. 30, 2023, and latest by Dec. 31, 2023, and the remaining time to provide an opportunity to the accused to lead defence evidence, if so desired, and to conclude its hearing. To meet the deadline, an endeavour be made to speed up the process for service and to pass the necessary directions in this regard. It is clarified that if expediting this trial disturbs the docket of the concerned court, then a balance be struck, and if, on this account, any delay happens, then an extension can be sought by mentioning such reasons. It is clarified that this order speeding up the trial is subject to the condition that neither the petitioner shall seek any adjournment nor try to use any tactics to delay the trial. If they do so, this order of expediting the trial shall stand automatically recalled by resorting to Section 362, read with Section 482 Code of Criminal Procedure, 1973, without any

further reference to this court. If any of the accused is on bail and fail(s) to attend the trial without any sufficient cause, then they be dealt with strictly but in accordance with law. It is clarified that if the trial is not concluded by the date mentioned above, and if the delay is not attributable to the petitioner, then the petitioner may file an application for bail before the trial court, which shall decide it expeditiously and consider the bail on the grounds of pre-trial custody, and all the previous orders of dismissal passed by the trial court or High Court shall not come in the way.

(ANOOP CHITKARA)
JUDGE

14.09.2023
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.