

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Neutral Citation No. 2023:PHHC:118183
CRM-M-43037-2022
Reserved on : August 31, 2023
Date of Decision : September , 2023

Krishan Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Gautam Dutt and
Mr. Karan Pathak, Advocates for the petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

DEEPAK GUPTA, J.

By way of this petition filed under Section 439 Cr.P.C., petitioner prays for grant of regular bail in case FIR No.0381 dated 09.10.2021, under Sections 302, 120-B and 34 of IPC, besides Section 25 of the Arms Act, 1959, registered at Police Station Hodal, District Palwal.

2. Murder of Tara Chand was committed on 08.10.2021. FIR was lodged on the complaint of his brother Mahesh against unknown persons. In his supplementary statement recorded on 30.11.2021, Mahesh suspected the role of his nephew-petitioner Krishan Kumar and that of Archana, the wife of the deceased in the murder of Tara Chand, due to illicit relations between them, about which deceased had come to know and which he used to object. Petitioner-accused Krishan Kumar was arrested on 01.12.2021 and as per the investigation, his disclosure statement resulted in recovery of weapon of crime.

3. It is contended by learned counsel for the petitioner that FIR has been lodged against unknown persons and that petitioner has been named as a suspect after a much delay on 01.12.2021. It is contended

further that as per prosecution, a bullet was retrieved from the dead body

and the said bullet along with the weapon allegedly recovered from the petitioner were sent to the FSL. As per the ballistic report, the bullet retrieved from the dead body had been fired from the weapon allegedly recovered from the petitioner. However, learned counsel for the petitioner has pointed out that though the recovery of weapon is shown to have been effected on 03.12.2021, i.e. almost two months after the occurrence, but said recovery is shown to have been effected from the same spot, from where the dead body was recovered. Learned counsel also contends that spot of crime had been visited on the date of finding of the dead body itself and so, recovery has been planted. Learned counsel further contends that none of the material witness as examined by the prosecution has supported its case, as even the complainant Mahesh examined as PW1 has denied any illicit relationship between petitioner and co-accused Archana. Attention is also drawn towards the fact that as per testimony of said Mahesh, the country-made pistol had been found by the police from the spot of crime on 09.10.2021. Submitting that further trial may take time to conclude and that petitioner is incarceration for the last more than 01 year and 09 months, prayer is made for grant of regular bail.

4. Opposing the bail petition, learned State counsel submits that the case is dependent upon circumstantial evidence and the mere fact that bullet retrieved from the dead body of the deceased matched with the weapon of the crime recovered pursuant to the disclosure statement of the petitioner, is sufficient to prove the charges against the petitioner. By pointing out towards the gravity of the offence, prayer for grant of bail is strongly opposed.

5. I have considered submissions of both the sides and have also perused the record carefully.

6. As per the final report under Section 173 Cr.P.C. (Annexure P-2), the spot of crime was visited on 09.10.2021 itself, where the dead body was lying. Even its rough site plan was prepared, the certified copy of which has been placed on record by counsel for the petitioner. The recovery of country-made pistol is shown to have been effected from the petitioner on 03.12.2021. The place of recovery is shown in a rough site plan, certified copy of which is also placed on record by counsel of the petitioner.

7. Learned counsel for the petitioner has rightly pointed out that the bare perusal of both the site plans i.e. site plan of the place of occurrence prepared on 09.10.2021 and the site plan of the recovery of weapon prepared on 03.12.2021 would reveal that these two site plans are of the same place. The spot of recovery of weapon is just nearby the spot from where the dead body was recovered. It is highly doubtful that when the spot of crime was visited on 09.10.2021 by the Investigating Officer, he missed the weapon of crime, which was lying at the same spot. In these circumstances, it will be a matter of appreciation of evidence on the part of the Trial Court as to whether the recovery of the weapon used in the crime from the petitioner is proved or not, particularly, when no independent witness was joined at the time of recovery of weapon.

8. Apart from above, the motive for committing the crime is an important aspect in a case dependent upon circumstantial evidence. In this case, the motive for committing the crime as projected by the

prosecution is illicit relationship between the petitioner and co-accused Archana, who is wife of deceased Tara Chand. The petitioner is none else than *bhanja* (sister's son) of deceased, who used to reside in the house of deceased. Said relationship had come to the knowledge of the deceased. However, as per the testimony of PW1 Mahesh, the brother of the deceased, who is complainant of the FIR, neither the petitioner nor Archana had any role to play in committing the murder of Tara Chand. He has clearly stated that they i.e. Archana and petitioner Krishan Kumar did not have any illicit relationship. Further demolishing the prosecution case, he disclosed during his cross-examination that a country-made pistol was found by the police from the spot where the dead body of Tara Chand was lying on 09.10.2021. PW2 Ved Ram and PW3 Mahender are also the family members of the deceased and both of them have also denied any illicit relationship between the petitioner and co-accused Archana.

9. Further, out of 19 witnesses cited by the prosecution, 11 have been examined. Further trial may take time to conclude. Petitioner is in custody since 01.12.2021 i.e. for the last more than 01 year and 09 months.

10. Having regard to all the aforesaid facts and circumstances, but without commenting anything further on the merits of the case, petitioner is admitted to bail. He is ordered to be released on bail on his furnishing requisite bail bonds and surety bonds to the satisfaction of learned Trial Court/Duty Magistrate concerned.

September 05, 2023

sarita

(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No