

CRM-M-42271-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-42271-2023 (O&M)

Date of decision: September 04, 2023

Rahul Malik

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Saurabh Sharma, Advocate for petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (ORAL)**CRM-36360-2023**

Instant is an application filed by petitioner under Section 482 Cr.P.C. for amendment of head note as well as prayer clause to incorporate Section 302 IPC in the list of Sections added later in the FIR.

For the reasons stated in application, same is allowed as prayed for, subject to all just exceptions. Registry to do the needful.

CRM-35689-2023

For the reasons stated in application, same is allowed subject to all just exceptions.

Main case (O&M)

After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.485 dated 25.11.2018, registered under Sections 302, 307, 323, 427, 452, 506, 148 read with Section 149 of the Indian Penal Code, 1860 (for short 'IPC') and Section 25 of the Arms Act, 1959 (for short 'Arms Act'), at Police Station, K.U.K., District Kurukshetra.

2. Per prosecution version, on 24.11.2018, a group of assailants armed with deadly weapons trespassed into the house of complainant and committed murder of Ankush Sharma and also caused injuries to the other family members of the deceased. An FIR was registered. Petitioner was arrested as a suspect on 01.12.2018 but was granted concession of

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regular bail by a co-ordinate Bench of this Court, then seized of the matter, vide order dated 12.02.2020 (Annexure P-6) passed in CRM-M-5209-2020. Subsequently, while on bail, petitioner was arrested in another FIR No.583 dated 21.11.2022 registered under Sections 307, 120-B IPC and Section 24 of Arms Act at Police Station, City Thanesar, District Kurukshetra. While in custody, he did not appear before learned trial Court in the FIR in question and his bail was cancelled on 25.11.2022. He was later produced before the Court below on production warrants on 06.04.2023 and was taken in custody and is in jail ever since. In the other FIR no.583, petitioner is stated to be not on bail.

3. Learned counsel for petitioner submits that after having remained in custody for almost 01 year and 02 months, petitioner was earlier granted bail by a co-ordinate Bench of this Court vide order dated 12.02.2020 (Annexure P-6) passed in CRM-M-5209-2020. Petitioner was regularly appearing before the learned trial Court from time to time. However, due to circumstances beyond his control since he was subsequently, arrested in another FIR No.583 dated 21.11.2022, he could not appear before learned trial Court. He further states that it was the duty of the State to produce him in the trial Court being in judicial custody. It was thus not the petitioner's fault. Petitioner was produced before the Court below on production warrants on 06.04.2023.

3.1. Learned counsel contends on merits that no specific allegation has been levelled against the petitioner. Further submits that petitioner allegedly fired a gunshot on the deceased, but the no bullet injury was found on the body of deceased. Even no firearm was recovered even after petitioner was arrested. However, an alleged recovery of a *gandasi* was foisted upon him.

3.2. Counsel also contends that statements of PW1-complainant/father (Satish Kumar) and PW2-mother (Hemlata) have been recorded. Both of them have not supported the prosecution case. He refers to their testimonies, Annexures P-2 and P-3, in this regard. He also refers to an affidavit dated 08.07.2019 (Annexure P-4) of another eye-witness, who is brother of the deceased to contend that said witness admitted that he saw the accused persons for the first time and they were not the same people who attacked his brother.

3.3. Learned counsel further urges that nothing is to be recovered from the petitioner and no useful purpose would be served by keeping him behind bars.

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4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. If enlarged on bail, there is every likelihood that petitioner may tamper with the evidence and/ or influence the witnesses. He further urges that petitioner is involved in 07 more cases. He does not controvert the factual position regarding grant of bail to the petitioner on an earlier occasion and thereafter, non-appearance before the trial Court due to which he was produced on production warrant on 06.04.2023 and is in custody since then.

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

6. Concededly, petitioner was earlier granted bail by a co-ordinate Bench of this Court vide order dated 12.02.2020 (Annexure P-6). Petitioner was regularly appearing before the learned trial Court from time to time. Due to circumstances beyond his control, since he was subsequently arrested in another FIR No.582 dated 21.11.2022, he could not appear before learned trial Court. It was the duty of the State to produce him in the trial Court being in judicial custody and there is no fault of the petitioner for his non-appearance.

6.1. Challan was filed and charges were framed on 22.08.2019. Investigation thus is complete and petitioner is not required for any further custodial interrogation.

7. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against petitioner are a matter of trial at this stage. On a Court query, learned State counsel, on instructions from SI Naresh, submits that out of total 40 witnesses, 24 have been examined so far. Conclusion of trial is 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 about 5 months, being behind bars since 06.04.2023.

8. 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.

9. It is stated that petitioner is a 24-year old young person. Being family man and having fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

11. 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.

13. Pending application(s), if any, shall also stand disposed of.

September 04, 2023
Mahavir

Whether reportable:	Yes/No
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