

CRM-M-42732-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 10.10.2023

Parveen

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sandeep Lather, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (Oral)

Following the denial of bail by the learned trial court, the petitioner is now before this court seeking his release as an undertrial in a case FIR No. 219 dated 16.09.2020, registered under Section 147, 148, 307, 302 of the Indian Penal Code, 1860 (for short 'IPC') (Section 120-B IPC was added later on) and Section 25 of the Arms Act, 1959 (Section 29 of the Arms Act was added later on) at the Bass Police Station in Hansi.

2. The FIR was lodged based on the statement of the complainant, Akshay, who alleged that on September 16, 2020, at about 11:15 a.m. when he and his brother Aman were right outside their house, accused Gurdeep @ Gabbu, Deepak, Bhagat, and Ram Bhaj, armed with weapons, came there and fired gunshots at them. The complainant saved himself by running inside the house, while his brother, Aman, was hit with a gunshot in his stomach. All the assailants thereafter fled with their weapons. The gunshot injury later proved fatal, and Aman, the brother of the complainant, passed away when brought to the hospital on the same day. The FIR was registered.

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2.1. Complainant Akshay gave his supplementary statement on the basis of which provisions of Section 120-B IPC were added. During the course of the investigation and finding evidence against the petitioner, he was arrested as a suspect on October 02, 2020, and a pistol .315 bore used in the commission of the offense was recovered from his house, as per his disclosure statement.

3. Foremost, the learned counsel for the petitioner contends that three eyewitnesses of the incident, who are the star prosecution witnesses, have not supported the prosecution version and have turned hostile. During their testimony before the Court, they stated that the petitioner was not involved in any manner in the offense for which he is being tried.

3.1. Learned counsel further contends that co-accused of the petitioner, namely Deepak and Gurdeep alias Gabbu, have been granted bail by this Court through orders dated January 13, 2023 (Annexure P-5) in CRM-M-36711-2022 and July 04, 2023 (Annexure P-6) in CRM-M-9298-2023, respectively. Based on the principle of parity alone, the petitioner should be granted bail during the trial's pendency, urges the learned counsel.

3.2. Furthermore, the petitioner's counsel asserts that no specific role has been attributed to the petitioner. Co-accused Manjit, Bhagat Singh, and Rambhaj, who were also named in the FIR as assailants, had been declared innocent by the Investigating Agency.

4. The learned State counsel opposes the petitioner's bail application, expressing concerns about the possibility of the petitioner fleeing from trial proceedings if granted bail. However, he submits that as per the status report, a country-made pistol used in the commission of the offense was recovered from the present petitioner. He also states that apart from this, FIR bearing No.114 dated 05.04.2014, under Section 61(1) of the Punjab Excise Act, 1914 at Police Station,

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Julana, and FIR No.774 dated 26.12.2015 under Sections 354-D, 302 IPC at Police Station Samalkha (Panipat) were also registered against the petitioner. Of the two aforementioned cases, he was convicted in FIR under the Excise Act.

5. Apropos, the attention of the Court has been drawn to an order dated July 04, 2023 (Annexure P-6), passed by this Court, wherein one of the co-accused involved in the same very FIR has already been granted the concession of bail. Perusal of the said order reveals that it was on the basis of the eyewitnesses having turned hostile that the concession of bail pending trial was granted.

6. I have heard the rival arguments and reviewed the case file.

7. In response to a query from the Court, it transpires that the investigation against the petitioner has been completed, and charges were framed on February 15, 2021. At this stage, the allegations against the petitioner are subject to trial. Of the thirty prosecution witnesses, eleven have been examined thus far. The trial's progress has been slow, and it is anticipated to take a considerable amount of time. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since October 02, 2020, for almost three years.

8. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that he might tamper with evidence or influence witnesses.

9. The petitioner is stated to be the sole provider for his family, which is currently living in dire poverty in his absence. As a responsible family man with a clean record and a stable residence, the petitioner is unlikely to pose a flight risk or evade trial proceedings.

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10. Co-accused namely Deepak and Gurdeep alias Gabbu have already been granted the concession of bail by this Court. I see no reason as to why petitioner should not be met with similar treatment.

11. Considering the overall scenario, 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.

12. Accordingly, petitioner is ordered to be released on bail 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. In case, petitioner is found involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.

14. 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 bail hearing alone and learned trial Court shall proceed without being influenced with this order.

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

(ARUN MONGA)
JUDGE

October 10, 2023

Ajay

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No