

CRM-M-50139 of 2021 (O&M)

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

CRM-M-50139 of 2021 (O&M)

Date of decision: 03.03.2023

Ashok Kumar @ Shoki

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. A.D.S. Sukhija, Advocate,
for the petitioner.

Mr. Adhiraj Singh, AAG, Punjab.

NAMIT KUMAR, J. (ORAL)

CRM-25631 of 2022

This application has been filed by the applicant-petitioner under Section 482 Cr.P.C. for placing on record statement of PW-1 Sanjiv Kumar as Annexure P-6.

Allowed as prayed for. Annexure P-6 is taken on record subject to all just exceptions.

CRM-7629 of 2023

This application has been filed by the applicant-petitioner under Section 482 Cr.P.C. for placing on record deposition of PW-3 Asha Rani and PW-4 Kushal Singh on record as Annexures P-7 and P-8, respectively.

Allowed as prayed for. Annexures P-7 and P-8 are taken on

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record, subject to all just exceptions.

CRM-18049 of 2022

This application has been filed by the applicant-petitioner under Section 482 Cr.P.C. with a prayer that offences under Section 460 read with Section 120-B IPC may also be read as part of FIR as well as main petition.

Notice.

Mr. Adhiraj Singh, AAG, Punjab, accepts notice on behalf of the respondent-State and submits that he has no objection if the prayer made in the application is accepted.

In view of the averments made in the application, same is allowed. Section 460 read with Section 120-B IPC are ordered to be read as part of FIR and the petition. Registry is directed to make necessary correction in the petition.

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In terms of order dated 02.02.2023, fresh status report dated 27.02.2023 by way of an affidavit of Ajay Singh, Deputy Superintendent of Police, Sri Anandpur Sahib, District Rupnagar, on behalf of the respondent-State has been filed, which is taken on record.

This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No.0188 dated 02.10.2020 under Sections 302, 148, 149 IPC (Sections 450 & 460/120-B IPC added later on), registered at Police Station Nurpur Bedi, District Rupnagar.

The present FIR has been got registered on the basis of statement made by Sanjiv Kumar son of Ashok Kumar to the effect that he

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is an agriculturist and on 30.9.2020 he was working in the fields with the tractor near to his house. Then accused Prince Kumar son of Joginder Singh came and sat on the cot lying in the fields. The complainant asked Prince Kumar as to why he has come without any reason to his field. Upon this, Prince Kumar caught hold the complainant from his neck and started giving slaps and scuffled with the complainant. Complainant further stated that after 15/20 minutes, he heard noise from his house and immediately he stopped his tractor and ran towards his house and saw that accused Prince Kumar armed with rod, Baljit Bhatti son of Dilawar Singh armed with rod, Karan Singh @ Babu son of Des Raj Mal armed with stick were beating his father Ashok Kumar. Prince Kumar gave blow of rod upon his father with an intention to kill, which hit the left side of the head of his father. Baljit Bhatti gave blow of rod which hit on right side near the eye of his father and Karanjit Singh @ Bassu gave stick blow which hit on face of his father. The complainant and his mother Asha Rani tried to save his father from the above said persons but were restrained by co-accused who were 2/3 unknown persons who had accompanied the main accused. Complainant took his father to Civil Hospital, Singhpur for treatment, where the doctor after giving first aid referred him to Civil Hospital, Ropar, where condition of father of complainant became serious and doctor referred him to PGI, Chandigarh, where he died during treatment. The complainant further stated that his father died due to the injuries give by Prince Kumar, Baljit Bhatti, Karanjit Singh @ Bassu and 2/3 unknown persons.

Learned counsel for the petitioner contends that the petitioner is innocent and has been falsely implicated in the present case. He was not

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named in the FIR, however, he has been nominated as an accused on the basis of supplementary statement of the complainant dated 07.10.2020 and statement of Khushal Singh, the alleged eyewitness who while appearing as PW4 has stated that the police never recorded his statement nor he witnessed the occurrence of the present case nor had seen any assailants/murderers of his cousin, namely, Ashok Kumar. He further submits that similarly other eyewitnesses and close relatives of deceased namely, Sanjiv Kumar, complainant, son of deceased; Asha Rani, widow of the deceased while appearing as PW1 and PW2, respectively have also not supported the prosecution version and have resiled from statements given to the police. He further submits that the occurrence is of 30.09.2022 between 10.30 p.m. to 11.00 p.m. and initially three persons were named as accused namely, Prince Kumar, Baljit Bhatti and Karanjit Singh @ Bassu and thereafter after seven days i.e. on 07.10.2020 statement of Khushal Singh and supplementary statement of complainant was also recorded wherein they named the petitioner. He further submits that petitioner is in custody since 13.07.2020. He further submits that investigation in the present case is complete; challan has been presented on 27.08.2021; charges have been framed and out of 19 prosecution witnesses, six witnesses have been examined; one has been given up and remaining witnesses are 12. He also submits that material witnesses have already been examined in the trial proceedings. Conclusion of trial is likely to take a considerable time. Therefore, no fruitful purpose would be served by detaining the petitioner behind bars. He may be granted the concession of regular bail.

On the other hand, learned State counsel while placing on

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record the custody certificate, opposed the prayer for grant of bail to the petitioner. However, he does not dispute the fact that three eyewitnesses have resiled from their statement and have not supported the prosecution version and trial is likely to take considerable time to conclude. He further submits that petitioner is involved in seven other cases.

To rebut the said contention, learned counsel for the petitioner contends that in one case, petitioner has been acquitted and six cases are under trial in which he is on bail. Learned counsel has relied upon the judgment of Hon'ble Supreme Court in ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and another, 2012 (2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

Keeping in view the custody period of the petitioner, which is 01 year 08 months and 28 days; material witnesses have resiled from their statements and have not supported the case of the prosecution; challan has been presented and charges have been framed; out of 19 prosecution witnesses only six have been examined and conclusion of trial may take a considerable time, however, without commenting upon the merits of the case, the petitioner is ordered to be released on regular bail during trial on

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his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

The petition stands disposed off accordingly.

However, nothing stated hereinabove, shall be construed as an expression of opinion on the merits of the case.

03.03.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No