

CRM-M-44090-2023 (O&M)

228

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-44090-2023 (O&M)
Date of decision: September 12, 2023

Shiv Kumar @ Shiba

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Vikas Gulia, Advocate for petitioner.

Mr. Karan Garg, AAG Haryana.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner, before this Court seekshis release as undertrial in a case bearing FIR No.91 dated 10.03.2019, registered under Sections 195-A, 506of the Indian Penal Code, 1860 (for short 'IPC'), at Police Station, Kundli, District Sonipat.

2. According to the prosecution's version, the complainant (Rinku) alleged that his father, namely Satbir, was killed by gunshot injuries on 11.01.2018 and the main accused, Deepak, son of Satpal, was still evading arrest. The murder incident was caused due to some dispute with Jagbir. Said Jagbir and Deepak also attempted to kidnap the complainant's cousin, namely Pawan, from Narela but were unsuccessful. Furthermore, it is alleged that the complainant had provided information about this incident to the police, specifically to Incharge Rambir. However, the matter of kidnapping was compromised in a Panchayat meeting. After this compromise, Deepak, son of Satpal, with the help of his accomplices, killed his father. The younger brother of the aforementioned Jagbir, namely Ravi and Ishu, from the family of the accused, openly threatened the complainant's brother, namely Monu, on 31.01.2019, stating that if the complainant's party ever testified in the case, they would be eliminated, just like their father. The complainant further stated that they had also informed the Kundli Police Station about this matter, but once again, the matter was compromised in a Panchayat meeting.

2.1. On 08.03.2019, at approximately 6:45 a.m., Deepak, son of Satpal, along with his three accomplices, armed with weapons, arrived at the scene of the incident and once again issued threats that they would be killed if they dared to testify in court. Following the complainant Rinku's statement, the FIR in question was registered.

CRM-M-44090-2023 (O&M)

2.2. Co-accused Deepak was arrested, and the pistol used in the commission of the crime in this case was recovered from him. On his disclosure statement, petitioner Shiv Kumar, also known as Shiba, was arrested on 23.12.2019. The petitioner has been in custody in this case since 23.12.2019, based on the disclosure statement of co-accused Deepak.

3. Learned counsel for petitioner submits that maximum punishment for commission of alleged offence qua the petitioner is 07 years. He is in custody since 23.12.2019 and has already undergone more than 03 years and 08 months. Even if, petitioner were to be treated as a convict, he would be entitled for suspension of sentence as he has already undergone more than half of the sentence envisaged for commission of offence in question.

3.1. Petitioner was implicated in this case on the basis of custodial disclosure statement of co-accused. Such a custodial statement is not *per se* admissible in court. There is no other evidence against the petitioner.

3.2. Learned counsel further contends that nothing is to be recovered from the petitioner now and he is not required for further custodial interrogation. False implication of petitioner cannot be ruled out. There is no likelihood of petitioner tampering with evidence and/or influencing prosecution witnesses.

4. On the other hand, learned State counsel opposes the petition. He submits that petitioner has committed a serious offence. He further urges that petitioner is involved in 07 other cases, though on bail in those cases. Petitioner has also been convicted in 02 more cases and acquitted in 05 other cases. Learned State counsel further argues that petitioner is a history sheeter and if released on bail, there is likelihood of petitioner fleeing from trial proceedings and/or tampering with evidence and influencing witnesses.

4.1. In rebuttal, learned counsel for petitioner submits that petitioner has undergone the entire sentence in both the cases in which he was convicted and was released in those but continues to languish in jail in the present case.

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

6. On a Court query, learned State counsel submits that after challan was filed, charges were framed way back on 11.03.2022. Investigation is complete, petitioner is thus not required for custodial interrogation. On instructions from ASI Naresh, he submits that out of total 14 prosecution witnesses, 10 have already been examined. Bail allows an accused to maintain his

CRM-M-44090-2023 (O&M)

freedom until his guilt or innocence is determined. Allegations against petitioner are a matter of trial at this stage. 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 more than 03 years and 08 months, being behind bars since 23.12.2019.

7. 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. There is no probability of tampering with evidence as the same has already been seized by the investigating agency.

8. It is stated that petitioner is 25-year old young boy. Having fixed abode, it is unlikely that petitioner poses any flight risk and/or will flee from trial proceedings.

9. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.

10. 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.

11. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for limited purpose of bail hearing alone and learned trial Court shall proceed without being influenced with this order.

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

(ARUN MONGA)
JUDGE

September 12, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No