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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-44183-2023 (O&M)

Date of decision: September 13, 2023

Surender Kumar

....Petitioner

versus

State of Haryana

....Respondent

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

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (ORAL)

This is the second foray of the petitioner, before this Court. He was an 18 years old boy at the time of incident in question, now about 25 years old and has been in custody for the past almost 7 years. He seeks release as an undertrial in a case bearing FIR No.292 dated 30.11.2016, registered under Sections 302, 364, 328 read with Section 120-B of the Indian Penal Code, 1860 (for short 'IPC'), at Police Station, Jakhal, Fatehabad. First petition was dismissed as withdrawn vide order dated 17.01.2018 (Annexure P-2) passed in CRM-M-42949-2017.

2. According to the prosecution's account, on November 30, 2016, the complainant, named Sohan, went to Jarmail Singh's agricultural field, who is the son of Pritam Singh, to do some labor work. Around 9:30 AM, he received information that his brother, Mohan (also known as Gagad), had been found dead near the cremation ground on a bed of paddy straw. Sohan rushed to the scene and discovered his brother's lifeless body next to the cremation ground wall, with a significant amount of blood oozing from his head. Sohan then informed his other brother, Satpal, and his nephew, Sandeep, who arrived at the scene. Sohan alleged that his brother Mohan had been murdered by an unidentified person who had inflicted head injuries on him. First Information Report (FIR) was registered.

2.1. In course of investigation, on December 3, 2016, Sohan, the complainant, gave a supplementary statement claiming that his brother's wife, Asha, was engaged in an

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extramarital affair with a local boy from the village. Sohan asserted that Asha, in a criminal conspiracy with this boy, was responsible for his brother's murder. He mentioned that his brother Mohan Lal's daughter had disclosed this information to him.

2.2. On December 4, 2016, the accused, Asha, was arrested, and she made a custodial statement implicating herself in the case. In her disclosure statement, Asha revealed that she was in relationship with Vicky, also known as Kala, a resident of Sidhani. During the course of the investigation, additional charges under Sections 328, 364, and 120-B of the Indian Penal Code (IPC) were added to the case.

2.3. On the same day, December 4, 2016, co-accused Vicky, also known as Kala, was arrested. In his custodial statement, he admitted his involvement. During the investigation, on the statement of a witness named Sandeep, also known as Vikram, a mobile phone belonging to co-accused Asha, containing a chip and SIM card, were found. The chip contained a photograph of co-accused Asha with the petitioner. It also revealed that the petitioner had met Asha on multiple occasions. Sandeep also stated that on the night of November 29-30, 2016 (the date of the incident), the petitioner had conversed with co-accused Asha multiple times, with recordings of these conversations existing. Subsequently, the petitioner was arrested on December 5, 2016.

3. Learned counsel for petitioner contends that presence of the petitioner at the place of alleged incident was never verified and ascertained by investigating authorities. Neither is there is any other corroborating proof regarding the same. No independent witness has mentioned his presence and/or that of other co-accused at the scene of occurrence. No Mobile phone tracking records and/or any other CCTV camera footage was even sought to be secured. Mere probability of involvement suspected by interested witness and/or custodial self-admission of other co-accused cannot be a ground to proceed against the petitioner.

3.1. Learned counsel further contends that prosecution has not concluded evidence even after granting repeated opportunities and the trial is pending for almost 7 years now. Implication of petitioner on the basis of bare custodial statement of co-accused cannot be made basis to hold him guilty of any offence, until discovery of any

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incriminating fact is made independent of such statement. Further detention of the petitioner is totally unjust. Petitioner is not involved in any other case, he contends.

3.2. On a Court query *qua* role attributed to the petitioner, learned counsel for the petitioner submits that other than the fact that petitioner is alleged to have been in touch with the wife of deceased on the intervening night, when he is stated to have been killed, there is no other evidence of any overt or covert act attributed to the petitioner. He argues that same cannot be the sole basis of forming an opinion of his culpability.

4. On the other hand, learned State counsel opposes the petition. He submits that petitioner along with other co-accused have committed a serious offence. He further submits that petitioner hatched a criminal conspiracy to commit murder of deceased-Mohan. Petitioner had conversation with co-accused-Asha several times on the intervening night of 29/30.11.2016 i.e., the day when deceased was murdered by co-accused. If released on bail, there is likelihood of petitioner fleeing from trial proceedings and/ or tampering with evidence and influencing witnesses. He, however, admits that petitioner is not involved in any other case.

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

6. On a query, learned State counsel, on instructions from SI Krishan Kumar, submits that after filing of challan, charges were framed way back on 28.04.2017. It has been almost 7 years since filing of challan, Trial is still pending. 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. Trial has already taken more than 6 years of time. Whereas, petitioner has been behind bars since 05.12.2016 i.e. more than 06 years 09 months.

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. It transpires that prosecution evidence is now over.

8. It is stated that petitioner was 18-year old at the time when he was arrested. He is now 25 years old. His entire life has already got ruined due to his false implication in the case and his future prospects are completely jeopardized for rest of his life due to

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his continued incarceration. Having fixed abode and clean antecedents, 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 13, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No