

207

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-46976-2023 (O&M)

Date of decision:22.09.2023

Suraj

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:** Mr. Bhupender Singh, Advocate,
For the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.698 dated 05.11.2021, registered under Sections 302, 323, 324, 379-B read with Section 34 of Indian Penal Code, 1860 (for short 'IPC') and Section 25 of Arms Act, 1959 at Police Station, Civil Lines, Karnal, District Karnal.

2. Per prosecution case, on 04.11.2021 at about 11:00 p.m., Mahender-complainant along with Parkash (deceased), Krishan and Sanjay had gone to railway station to receive the mother of Sanjay. 3-4 boys came there on a motorcycle, and started demanding money from Sanjay. When he refused, they inflicted a knife blow to him. In course of this scuffle, Parkash was also inflicted a knife blow on his stomach and was given kick blows by the assailants. They snatched a sum of Rs.15-17,000/- from them and fled away. Deceased Parkash succumbed to his injuries during treatment. During investigation, petitioner along with co-accused was arrested on 06.11.2021. In their custodial statement they admitted their involvement and pursuant thereto, the motorcycle used in the occurrence and cash amount Rs.3200/- was recovered from Gopal @ Mangal Singh while knife used in the occurrence was recovered from petitioner-Suraj. Certain cash amount was also recovered from petitioner Suraj and co-accused Kanipa alias Kannu.

3. Learned counsel for the petitioner contends that no role has been attributed to the petitioner in the alleged murder. He further submits that complainant/injured Mahender Kumar and other injured witness Sanjay, who stepped into the witness box as PW-1 and PW-

even eyewitness Rohit @ Sukha has already executed an affidavit dated 06.07.2023, in which he has stated that he has no knowledge about the present case, no fight had taken place in his presence and that he does not identify the petitioner as an assailant. On that premise, learned counsel for petitioner argues that in view of the testimony already on record of the complainant and other eyewitness, who have turned hostile, it does not appear to be a case of conviction *qua* the petitioner and in all likelihood, trial is likely to result in his acquittal. Moreover, there is no other private witness left to be examined and only official witnesses remain to be examined.

3.1 He further submits that petitioner is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/ or influencing prosecution witnesses. Further contends that out of 19 prosecution witnesses, two have been examined. Trial will take some time to conclude as it is proceeding at a snail pace.

3.2 Co-accused has been granted concession of regular bail by this Court vide order dated 18.08.2023(Annexure P-5) passed in CRM-M-39517-2023.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. He further submits that petitioner and his co-accused suffered custodial statement admitting their complicity 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, under instructions from SI Bansi Lal, learned State counsel informs that after filing of challan, charges were framed and out of 19 prosecution witnesses, 02 have already been examined. He does not controvert that the 02 examined witnesses have been declared hostile. Be that as it may, trial is still likely to take long time as it is proceeding at a snail pace.

7. Allegations against petitioner are a matter of trial at this stage. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been languishing in jail for more than 01 year 10 months, being behind bars since 06.11.2021. He 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.

8. Petitioner is stated to be 29-year old family person and is only breadwinner of his family. He has already lost his livelihood due to prolonged incarceration. Petitioner is not flight risk in any manner, given that he has a family to look after and has a fixed abode.
9. Co-accused of petitioner has already been granted the concession of bail by this Court.
10. 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.
11. Accordingly, petitioner is ordered to be released on bail, if not required in any other case, on his furnishing bail bonds and surety bonds to the satisfaction of Ld. 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.
12. In case, petitioner is found to be involved or gets involved in any offence while on bail, and/or any of the factual averments *qua* the testimony of witnesses and affidavit of eyewitness Rohit alias Sukha turns out to be incorrect, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.
13. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition alone and learned trial Court shall proceed without being influenced with this order.
14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

22.09.2023
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No