

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

CRM-M-47785-2023

Date of Decision:15.11.2023

Yogesh @ Yogesh Kumar

...Petitioner

vs.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Vikas Bishnoi, Advocate
for the petitioner.

Ms. Sheenu Sura, Deputy Advocate General, Haryana.

N.S.Shekhawat J. (Oral)

1. The petitioner has filed the instant petition under Section 439 Cr.PC with a prayer to grant regular bail in case FIR No. 269 dated 26.08.2020 registered under Sections 302,34,380 and 457 of IPC (392 of IPC added later on and 380 and 457 of IPC have been delted), Police Station Bhuna, District Fatehabad.

2. As per the case of the prosecution, on 26.08.2020, the information was received in the police Station regarding the murder of Jagdish Chander son of Chiranji Lal, and on getting the said information, the police officials reached at the spot. Shiv Kumar son of Jagdish Chander, since deceased, was found present at the spot. As per him, at about 8/8.30 p.m. on 25.08.2020, his father Jagdish Chander slept in front of shop, after taking a meal and some unknown persons had committed murder of his father by assaulting him. As per the complainant, after killing his father, theft was committed from the drawer of the shop and the cameras were broken. At about 5.45 am, on 26.08.2020, Ravi,

neighbour informed him about the incident and whole family reached at the spot.

3. Learned counsel for the petitioner contends that the petitioner was not named in the present case and has been involved on the basis of the disclosure statement suffered by the co-accused Mandeep. He was also named one of the assailants by the complainant in his supplementary statement on 27.08.2020. Learned counsel further contends that no recovery was effected from the present petitioner and there was no evidence to connect the petitioner with the alleged crime. As per him, the petitioner is in custody since 30.08.2020, i.e. for the last about three years and two months. The challan has already been presented in the present case and out of total 21 witnesses, no witness has been examined so far. Learned counsel for the petitioner has also referred to the findings recorded by this Court in CRM-M-18443-2022 titled as “*Mandeep @ Monu Vs. State of Haryana*” (Annexure P-2) which are as follows:-

The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting bail, no doubt the seriousness of the charge is one of the relevant considerations, which should be taken into account, but this Court also has to take into consideration the circumstances, which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, custody of the under trial, chances of threatening the witnesses etc. In the present case, no doubt the allegations levelled by the present petitioner are very serious in nature, however, this Court cannot be oblivious of the fact that the petitioner was arrested in the present case on 27.08.2020 and the petitioner is continuing in custody as an under

trial for the last more than 03 years. Once an accused continues in under trial for such a long period, there is no doubt that his rights under Article 21 of the Constitution of India are violated, which is the most basic right of all Fundamental Rights. Even otherwise, the Hon'ble Supreme Court has held a number of judgments that an under trial prisoner cannot be detained in jail custody to an indefinite period and every person, detained or arrested is entitled to speedy trial. This Court is conscious of the fact that on the one hand, the petitioner continues to be in custody for the last more than 03 years, whereas on the other hand, no witness has been examined, out of total 21 witnesses and the learned trial Court may take considerable time in concluding the trial proceedings.

4. On the other hand, learned State counsel has vehemently opposed the prayer made by learned counsel for the petitioner on the ground that the petitioner was actively involved in the commission of crime and three more cases have been registered against the present petitioner, however, she admits that the petitioner is on bail in all these cases.

5. I have heard the learned counsel for the parties and perused the record.

6. Thus, in view of the above discussion and also the fact that the petitioner has been in custody for the last more than three years and two months , further custody of the petitioner will serve no meaningful purpose.

7. Without commenting on the merits of the case, the present petition is allowed. The petitioner is ordered to be released on bail pending trial on his furnishing bail bonds and surety to the satisfaction of the concerned trial Court/ Duty Magistrate/Chief Judicial Magistrate subject to the following conditions:-

(i) The petitioner shall not directly or indirectly make any

inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.

(ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.

(iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.

(iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.

(v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.

(vi) In case, the petitioner is involved in any other criminal activity, during the pendency of the trial, it shall be viewed seriously.

(vii) The concerned Court may insist on two heavy local sureties and may also impose any other condition, in accordance with law, while accepting the bails bonds and surety bonds of the petitioner.

(viii) The petitioner shall report every 1st Monday and 3rd Monday of English calender month before the concerned SHO till the

conclusion of the trial and SHO shall mark his presence by making an entry in the Rojnamcha.

8. In case, the petitioner violates any of the conditions mentioned above, it shall be viewed seriously and the concession of bail granted to him shall be liable to be cancelled and the prosecution shall be at liberty to move an application in this regard.

15.11.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No