

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

CRM-M-52779-2022 (O&M)
Date of Decision: 31.05.2023

SURENDER ALIAS KALLU

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. D.S. Matya, Advocate
for the petitioner.

Mr. AmrikNarwal, D.A.G., Haryana.

HARSH BUNGER, J.

The petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure, seeking regular bail in case FIR No.315 dated 21.05.2020, registered under Sections 302, 364, 201 of the Indian Penal Code (for short 'the IPC') and Section 25 of the Arms Act, 1959, at Police Station Ballabgarh, District Faridabad (Annexure P-1), during the pendency of trial.

2. Upon issuance of notice, Learned State counsel has filed status report by way of an affidavit dated 19.01.2023 of Mr. Sukhbir Singh, H.P.S., Assitant Commissioner of Police, Tigaon, Faridabad on behalf of respondent/State, which is already on record.

3. Succinctly, the above said case FIR has been registered on the statement of Bhagat Singh Saini son of Ram Singh, on the allegations that he is resident of village Uncha, Ballabhgarh and they are three brothers, who are married. The complainant's brother Charan Singh (deceased) aged

about 37 years was doing scrap work along with one Sunder Saini at Village Chandawali. As per the complainant, his brother Charan Singh (deceased) was not consuming liquor from last 3-4 months but on 21.05.2020 at about 11:00 A.M. friends of Charan Singh (deceased) took him at a tubewell, at Milk Plant Road, where they got Charan Singh (deceased) consume liquor and thereafter they murdered complainant's brother with knife by slitting his throat.

4. Learned counsel for the petitioner submitted that the petitioner has been falsely implicated in the present case. It is submitted that petitioner is not named in the FIR and there is no eye witness and the entire case of the prosecution is based on circumstantial evidence. Learned counsel for the petitioner contended that the petitioner has been implicated in this case on the basis of his own disclosure statement, which is not admissible. It is further submitted that the prosecution case is based upon last seen theory and to prove the same CCTV footage of the camera installed by the concerned Panchayat of the village is relied upon and to prove the said footage, which has not been proved. Learned counsel further submitted that all the material witnesses have been examined and nothing incriminating has come against the petitioner. It is contended that the petitioner has been in custody since 23.05.2020; the investigation of this case is complete; challan stands presented on 24.07.2020 and even charges have been framed. Learned counsel next submitted that there are total 26 witnesses but only 7 witness have been examined so far and the trial would take long time to conclude. It is stated that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court; accordingly prayer for grant of regular bail is made.

5. Learned State counsel opposed the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. It is submitted that the petitioner has lastly been seen along with the deceased as per the CCTV Footage and the knife used in commission of crime has been discovered pursuant to the disclosure statement of the petitioner. It is submitted that the RFSL report confirmed human blood on recovered knife and the cause of death of the deceased was due to injury caused as per the post-mortem report. Learned State counsel has submitted that during the investigation, the petitioner was arrested on 23.05.2020 and he suffered a disclosure statement and confessed his guilt regarding committing murder of Charan Singh by giving a *knife blow*. Learned State counsel further submitted that there is sufficient material available on the record, showing the complicity of the petitioner in the crime, inasmuch as the petitioner was seen with deceased-Charan Singh, on a motorcycle in a CCTV footage of Village Chandawali and even the place of occurrence was got demarcated by the petitioner. Learned State counsel submitted that there is only one accused i.e. the petitioner and there is sufficient link evidence as well as circumstantial evidence, which connects him with the commission of crime. Learned State counsel has submitted that the petitioner is involved in heinous offence of murder and he is not entitled to the concession of regular bail. It is submitted that in case, the petitioner is enlarged on regular bail then he may tamper with the evidence and influence the material witnesses or he may abscond and flee from justice which may delay the trial; accordingly, prayer for dismissal of the petition has been made.

6. I have heard learned counsel for the parties and perused the paper book as well as status report filed by learned State counsel, with their able assistance.

7. In the instant case, the brother of the complainant namely, Charan Singh, has been murdered by slitting of throat. As per the status report, the petitioner is the only accused. Merely because the prosecution case rests on circumstantial evidence, the same cannot be the sole ground to release the petitioner on bail if during the course of investigation, sufficient evidence/material has been collected and a *prima facie* complete chain of events is established. As per the status report, the petitioner has got recovered the knife with which the crime was committed and as per the report of RFSL, the human blood on the recovered knife has been confirmed. Further, the petitioner has also got the place of occurrence demarcated, apart from the CCTV footage of Village Chandawali, which according to the prosecution depicts, deceased-Charan Singh was going with the petitioner on a motorcycle.

8. Hon'ble the Apex Court in ***Ramesh Bhavan Rathod vs Vishanbhai Heerabhai Makwana (2021)6 SCC 230***, observed that while deciding the application under Section 439 of the Code of Criminal Procedure, the High Court or for that matter, the Sessions Court would not launch upon a detailed evaluation of the facts on merits since a criminal trial is still to take place. It was further observed that the outcome of the application has a significant bearing on the liberty of the accused on one hand as well as the public interest in the due enforcement of criminal justice on the other and the rights of the victims and their families are at stake as well. Further, although the petitioner has been in custody since 23.05.2020; however, merely long incarceration in jail or delay in the conclusion of the trial cannot be the ground to release him on bail, especially when the petitioner is being tried for a serious and heinous offence of murder of one Charan Singh. In ***Kalyan Chandra Sarkar v. Rajesh Ranjan @***

PappuYadav, 2004(2) RCR (Criminal) 254, Hon'ble Apex Court held as under:

"The condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitled the accused to be enlarged on bail, nor the fact that the trial is not likely to be concluded, in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

9. Concededly, the trial in this case is undergoing. The guilt of the accused shall be determined during the trial. The apprehension expressed by the State counsel that if released on bail, there is every likelihood of the petitioner trying to tamper with the prosecution evidence by giving threats and inducement to the prosecution witnesses and absconding even to prolong the trial, cannot be brushed aside lightly.

10. Thus in my considered view, the gravity and seriousness of allegations with likelihood of petitioner tampering with the prosecution evidence and even absconding being there, no ground for grant of regular bail to the petitioner is made out. Accordingly, the present petition under Section 439

Cr.P.C. seeking grant of regular bail to the petitioner (Surender @ Kallu) in case FIR No.315 dated 21.05.2020, registered under Sections 302, 364, 201 and 25 of the Arms Act, 1959, at Police Station Ballabhgarh, District Faridabad; is dismissed.

11. Nothing stated here-in-above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

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

May 31st, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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