

CRM-M-51619-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 16.10.2023

Koshinder

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Gurmohan Singh Bedi, Advocate for the petitioner.

Mr. Karan Garg, AAG Haryana.

ARUN MONGA, J. (Oral)

Following the denial of bail by the learned trial Court, the petitioner is now before this Court seeking his release as an undertrial in a case FIR No.458 dated 23.12.2020, registered under Sections 148, 341, 302 read with Sections 149, 120-B of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') (Section 201 added later on) and Section 25 of Arms Act, 1959 (hereinafter referred to as 'Arms Act'), at Sector-31 Police Station, in Faridabad.

2. According to the prosecution's account, the complainant, Hemraj, alleged that on December 23, 2020, his brother, Manoj (who has since passed away), was traveling back from Delhi in a Scorpio vehicle when 8-10 unknown individuals began to follow him in a Corolla, a Fortuner, and another vehicle. They also fired gunshots at his brother. Manoj attempted to escape, but the assailants blocked his path by stopping their vehicles in front of him. They then opened fire indiscriminately at Manoj. Subsequently, the assailants fled the scene. The complainant rushed his brother to Asian Hospital, where the doctors declared him deceased. An FIR was registered.

2.1. The complainant informed that his brother had received a threat from one Manoj Mangariya about 7-8 days prior concerning an ongoing dispute

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between them in their village. In the course of the investigation, the petitioner, who was in custody in some other cases, was arrested as a co-suspect in this case in pursuance of a production warrant on January 21, 2022.

3. Firstly, the learned counsel for the petitioner argues that the petitioner's role is comparable to that of co-accused Vikas @ Vicky, Dharmender, and Ashok Kumar @ Patil, who were assigned similar roles to the petitioner and had already been granted bail by this Court according to the orders dated August 16, 2023, and October 12, 2023, passed in CRM-M-2803-2023, CRM-M-17447-2023, and CRM-M-50740-2023, respectively. Therefore, based on the principle of parity alone, the petitioner should be granted bail during the trial's pendency.

3.1. The learned counsel also refers to the depositions of the complainant-PW1 and two other prosecution witnesses, PW2 and PW3 (Annexures P-2 to P-4, respectively), to demonstrate that the complainant and the two other prosecution witnesses have recanted their initial statements given to the police and have not supported the prosecution's version. They were declared hostile. He further asserts that, based on these depositions, it is likely that the trial will result in the petitioner's acquittal, claiming that the petitioner has been wrongly accused in this case.

3.2. The petitioner has been in custody since January 21, 2022. No recovery has been made from the petitioner, and no specific role has been attributed to him. The petitioner's counsel further argues that the petitioner is not required for further custodial interrogation and that there is no likelihood of the petitioner tampering with evidence or influencing prosecution witnesses. The petitioner is believed to be entirely innocent and falsely implicated in the case.

4. On the contrary, learned State counsel strenuously opposes the petition, expressing concerns about the possibility of the petitioner fleeing from trial proceedings if granted bail. Also argues that the petitioner has committed a

serious offense. On a Court query, he does not controvert the grant of bail to the co-accused and complainant and other two prosecution witnesses turning hostile, as aforesaid. Per custody certificate, petitioner is involved in thirteen other cases, although he is on bail in all the cases.

5. I have heard the rival arguments and reviewed the case file.

6. In response to a query from the Court, under instructions from ASI Parvesh, learned State counsel informs that the challan has already been filed and charges were framed on December 12, 2022. Thus, the investigation regarding the petitioner is complete, and he is not required for custodial interrogation.

7. At this stage, the allegations against the petitioner are subject to trial. The trial's progress has been slow, and it is anticipated to take a considerable amount of time. Of the fifty six witnesses, only three have been examined so far. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since January 21, 2022, for more than 01 years and 08 months.

8. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that he might tamper with evidence or influence witnesses. There is no probability of tampering with evidence as it has already been seized by the investigating agency.

9. The petitioner is stated to be a 24-year-old person and having a fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

10. Co-accused of the petitioner have been granted the concession of bail by this Court.

11. Considering the overall scenario, 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 by keeping the petitioner in further preventive custody.

12. Accordingly, the petitioner is ordered to be released on bail, in case not required in any other case, upon furnishing bail bonds and surety bonds to the satisfaction of the learned trial Court, where his case is being tried, and in case he/she is not available, before the learned Duty Judge, as the case may be.

13. In case the petitioner is found involved or gets involved in any offense while on bail, the prosecution shall be at liberty to seek the cancellation of his bail in the instant case.

14. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on the merits of the case, as they are for the limited purpose of the bail hearing alone, and the learned trial Court shall proceed without being influenced by this order.

15. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 16, 2023
Ajay

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