

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

CRM-M-54689-2022

Date of Decision: 24.05.2023

Amit @ Lalu @ Amit Sharma

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Suvir Sidhu, Advocate, for the petitioner.

Mr. B.S. Virk, Sr. Deputy Advocate General, Haryana.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.1352 dated 23.07.2019, registered under Sections 307, 379-B IPC and Section 25 of the Arms Act (charge-sheet presented under Sections 302, 307, 392, 397, 120-B IPC and Sections 25(1A)/27(3)/54/59 of Arms Act), at Police Station Shivaji Nagar, District Gurugram.

Adumbrated facts of the case are that statement of Sunil Kataria was recorded, wherein, it was alleged that he and his brother Manjit Kataria worked as carrier in the Khandsa vegetable market. His brother Manjit Kataria had some dispute with Amit @ Lalu (petitioner) and hence he was threatening to kill his brother Manjit Kataria. On the day of the occurrence at about half past five/six in the evening, he saw Amit @ Lalu quarreling with his brother Manjit Kataria, when he was sitting in his shop. On hearing the same, he came out of the shop and saw that Amit @ Lalu was holding a desi katta and he shot at his brother in his stomach. After being shot his brother Manjit Kataria ran towards the main road, whereas, Amit @ Lalu followed him flaunting the weapon in his hand. He and his partner Pritam @

Bunty followed him but Amit @ Lalu escaped on his scooty. Thereafter, he brought his brother Manjit Kataria to Medanta Hospital for treatment with the help of his colleagues. Request was made to take legal action against the accused. During the treatment, his brother Manjit Kataria died in the Medanta Hospital on 30.07.2019 and thus, offence under Section 302 IPC was also added. On the basis the statement, a formal FIR was registered and the investigation commenced. Challan was presented against four accused, out of which one accused i.e. Nawab Ali was shown to be proclaimed offender. The petitioner approached the Court of learned Additional Sessions Judge, Gurugram for grant of bail, however, the learned Court after hearing both the sides, dismissed the same vide its order dated 06.10.2022. Aggrieved by the same, the petitioner approached this Court by way of filing the present petition for grant of bail.

Learned counsel for the petitioner has vehemently contended that the present case is a blind murder, however, the complainant and other witness Pritam @ Bunty have been planted as the eye witnesses by the Investigating Agency. He submits that as per the allegations made in the FIR, the complainant and Pritam @ Bunty were shown to be eye witnesses, who shifted the deceased to Medanta Hospital after having been shot. However, these witnesses have been examined before the trial Court and there are material contradictions in their deposition showing that they were not the eye witnesses. He has drawn the attention of this Court to the deposition of the official witness ASI Rajesh Kumar, who has been examined as PW-3. He deposed before the trial Court that he went to the place of occurrence where injured Manjit Kataria was lying with gun shot injury in stomach and he picked him up and sent him to Medanta Hospital.

He further submits that in his cross-examination that the place of occurrence was not a crowded place and the injured was found lying alone. He submits that the complainant has been examined by the trial Court as PW-4, who submitted in his examination-in-chief that he alongwith his friend Pritam Singh admitted the deceased in Medanta Hospital where he was treated. Learned counsel for the petitioner submits that Pritam Singh has been examined as PW-5, however, he deposed that he did not know who fired upon Manjit Kataria i.e. the deceased and hence he was declared hostile. He submits that in the deposition of the witnesses, there are material contradictions and thus, false implication of the petitioner is writ large. He submits that out of four accused, two accused are already on bail, whereas, one accused has been declared proclaimed offender. He submits that the petitioner is behind bars from last about 3 years 10 months, however till date the trial is not concluded by the prosecution and thus, the petitioner is languishing in the jail for considerable long time and the trial is not likely to be concluded in short time. He submits that the petitioner has no criminal antecedents and thus, in the overall facts and circumstances, he deserves to be granted bail.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner and has submitted that the case of the prosecution is based on the eye witness account. He submits that though one of the eye witnesses Pritam Singh has been declared hostile, however, the complainant has duly supported the case of the prosecution. He submits that the ocular version is duly corroborated by the medical evidence. He submits that weapon of the offence has also been recovered from the petitioner and thus complicity of the petitioner has been

duly corroborated. He submits that two of the co-accused have been granted bail, however, case of the petitioner is distinguishable from those two co-accused. He submits that out of 22 prosecution witnesses, 9 witnesses have been examined and as per his instructions the petitioner has no criminal antecedents.

Heard.

Evidently, the petitioner is behind bars since 21.09.2019. The prosecution has examined only 9 prosecution witnesses, out of 22 witnesses. There is nothing on record to show that the petitioner has any criminal antecedents. Whether depositions made by the witnesses so far amount to material contradictions or not, is a matter of trial to appreciated by the trial Court on appreciation of complete evidence to be led by both the parties before it. However, this Court cannot ignore the fact that the petitioner is behind bars from the last about four years and till date only 9 witnesses have been examined. This Court would refrain itself from commenting anything on the merits of the case, however, considering the prayer for grant of bail to the petitioner, I am of the view that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. The trial would take sufficiently long time for its conclusion.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail to the satisfaction of the concerned trial Court/Duty Magistrate.

Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

24.05.2023
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No