

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-53647-2023 (O&M)

Reserved on: 17.11.2023

Pronounced on: 28.11.2023

Amit Kataria @ Kalu

... Petitioner(s)

Versus

State of Haryana

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Amit Kataria @ Kallu, Advocate
for the petitioner(s).

Mr. Rajat Gautam, Addl.A.G., Haryana.

Mr. Tushar Wadhwa, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
18	6.2.2020	Sadar Rewari, District Rewari	302, 307, 120-B, 34 IPC.

1. The petitioner, who is incarcerated for the offence of murder and other connected offences in the FIR captioned above, had come up before this Court under Section 439 CrPC seeking bail, primarily on the ground that he is in custody since 18.2.2020.

2. In paragraph 13 of the bail application, the accused declares the following criminal antecedents:

- “i) FIR No.646/2014, under Sections 148, 149, 323 IPC, Police Station Sector 10A, Gurugram.
- ii) FIR No.744 dated 16.11.2015, under Sections 148, 149, 323, 325, 452, 506 IPC, Police Station Sector 10A, Gurugram. (on Bail vide order dated 31.08.2018).
- iii) FIR No.183/2016, under Section under Sections 147, 148, 149, 323, 427, 506 IPC, Police Station Sector 10A, Gurugram.
- iv) FIR No.773 dated 30.10.2017, under Section 25, 54, 59 Arms Act, Police Station Sector 10A, Gurugram. (In custody).
- v) FIR No.481 dated 19.11.2017 under Section 323, 251, 506, 34 IPC and Section 25 of Arms Act at Police Station Kherki Daula, District Gurugram. (In custody)

- vi) FIR No.1352 dated 23.07.2019 under Section 302, 120B, 34 IPC and Section 25 of Arms Act at Police Station Shivaji Nagar, District Gurugram. (On bail vide order dated 24.10.2019)
- vii) FIR No.346/2019 under Section 399, 402 IPC and Section 25 of Arms Act at Police Station Kherki Daula, District Gurugram. (On bail vide order dated 10.10.2019);
- viii) FIR No.235 dated 21.08.2020 under Section 302, 307, 148, 149, 216 IPC and Section 25 of Arms Act at Police Station Sector 9A, Gurugram (On bail vide order dated 21.01.2022). The copy of the order dated 21.01.2022 is annexed herewith as Annexure P-5.
- ix) FIR No.251 dated 08.10.2020 under Section 186, 353, 307, 34 IPC and Section 25 of Arms Act at Police Station SPL Cell, Delhi (On bail vide order dated 03.09.2021)”

3. Brief facts of the case of the prosecution is being extracted from the reply filed by way of affidavit of DySP, Rewari, which reads as under:-

- “i. That the law was set in motion on the basis of the statement ated 06.02.2020 made by Ashok Kumar @ Bhadhu son of Prakash Chand, resident of Gokalgarh, District Rewari. The complainant Ashok Kumar contended that he was running a hotel on the National Highway 47 in the name and style of Bhole Nath and on the fateful day of 05.02.2020, he had gone in village Jat Bhurthal in order to attend the Lagan ceremony of his companion Dinesh. After taking the meal, he came out of the house of Dinesh and met Moni @ Lalit and his friends. When they were talking each other, the sound of gunshot was heard all of a sudden. Within a fraction of second, complainant Ashok Kumar sustained gun shot on the thigh of his right leg. Lalit @ Mony and Deepak also sustained gunshot injuries and the persons who fired the shots fled away from the spot. The complainant alleged that he inquired at his own level and found that Hari Om, Amit and Pawan along with their accomplices fired the shots at them with the intention to kill him and Lalit @ Mony. On the basis of FIR, aforementioned was registered and investigations were taken up in the matter.
- ii. That on the basis of the MLR related to the complainant Ashok Kumar and his statement, the instant FIR was got registered under Sections 307/34 IPC and Section 25 of Arms Act, 1959. The investigation was initiated;
- iii. That the injured Lalit @ Mony expired on 06.02.2020 due to the gun shot injuries sustained by him. Hence, offence punishable under Section 302 IPC was added to the instant FIR.
- iv. That the petitioner Ainit Kataria @ Kalu was arrested on 18.02.2020 from Bahadurgarh and his disclosure statement was recorded. English Translation copy and vernacular copy of discloser statement is liereby annexed with Annexure R-II & R-III.
- V. He disclosed that the conspiracy was hatched by him at the house of Hari Om in order to avenge the death of his companion Sanju. At the time of hatching the conspiracy, Hari Om, Pawan, Rohit, Rahul, Sukha, Kapil, Sunil @ Sonu and Rajeev were also with him. After killing Lalit @ Mony, the petitioner was informed by Hari Om. The petitioner disclosed that as per

the conspiracy, all the assailants went to the spot in a blue coloured Swift car driven by Hari Om and an I-20 car driven by Rajeev @ Raju. The petitioner remained at home. On the basis of the above disclosure statement of the petitioner, offence punishable under Section 120B IPC was added to the instant FIR.

- vi. That during the course of investigation, co-accused Hari Om was also arrested. On dated 11-05-2020 on completion of the investigation qua petitioner Amit @ Kalu and Hari Om, the report under Section 173 of Cr.P.C. was submitted in the Court of competent jurisdiction. During the course of the investigation, co-accused Rohit was arrested on dated 16-02-2021 and Sunil @ Sonu was arrested on dated 02-03-2021 respectively. On dated 04-03-2021 co-accused Sonu disclosed in his statement that the weapon used by him in commission of the offences which was taken from Yashpal Sarpanch was recovered in the course of encounter with the police in Delhi. The I-20 car in an accidental condition was got recovered by accused Sunil @ Sonu from Nawalpur Turn, Jaipur road and the same was taken into police custody. Co-accused Monu @ Sukha was duly arrested on 06.04.2021 and his disclosure statement was recorded, in which he disclosed that the conspiracy to kill Lalit @ Monu to avenge the death of Sanjeev was hatched at the house of Hari Om at the instructions of their master mind Amit @ Kalu (the petitioner herein). A pistol used in commission of the offences was recovered from accused Monu @ Sukha in the course of investigation of FIR No. 235 of 2020, Police Station Sector-9A, Gurugram. The empty cartridge recovered from the spot, the bullet taken out from the dead body of Lalit @ Mony and the bullet taken out from the body of injured Ashok, both were sent to FSL, Madhuban for the purpose of comparison of the same with the pistol recovered from the Monu @ Sukha in FIR No. 235 of 2020. Section-34 IPC was dropped and Sections 148/149-IPC were added to the instant FIR. Supplementary report under Section-173 (8) of Cr.P.C. was submitted in the Court on 05.05.2021 qua the accused Rohit, Sunil @ Sonu and Monu @ Sukha. Production warrants against the co-accused persons Kapil and Rajeev @ Raju were got issued and they were duly arrested on 14.07.2021. Accused Kapil got recovered a country made pistol from a place near Nawalpur Turn and the same was taken into police custody. Accused Rahul was duly arrested on 12.08.2021 and his confessional statement was recorded. Accused Pawan Nehra was produced before the Ld. Trial Court in pursuance of the production warrants and he was duly arrested on 08.09.2021. Supplementary report on completion of the investigation was filed in the Ld. Trial Court against accused Kapil, Rajeev @ Raju, Rahul and Pawan Nehra. Production warrants were got issued against the accused Yashpal and he was duly arrested. The car bearing registration No. HR-76D- 7574 was got recovered by him from his house, Accused Sawan @JD is yet to be arrested and the investigation in the case is going on.
- vii. That on 11.08.2020, the petitioner was granted interim bail for a period of 45 days and he was to surrender himself at District Prison, Bondsai, Garügram on 24.09.2020. However, the petitioner was involved in a case relating to commission of a triple murder during the period when he was

on interim bail and the said triple murder is the subject matter of investigation of FIR No. 235 dated 21.08.2020, under Sections 302/307/148/149/216 IPC and Section 25 of Arms Act, 1959. During the interim bail, he also committed the offences subject matter of FIR No. 251 dated 08.10.2020, under Sections 186/353/307/34 IPC and Sections 25/27 of the Arms Act, 1959.

- viii. That the final report in the case has already been filed qua the petitioner on 11.05.2020 and the case is fixed for 05.12.2023 at the stage of prosecution evidence. Apart from the petitioner, there are 10 other accused standing trial in the present case and there are 75 prosecution witnesses out of them 11 examined, and 64 prosecution witnesses are yet to be examined.
- ix. That the petitioner is a habitual criminal having his complicity in criminal cases of serious nature. The details of the FIR's already registered against the petitioner are being enumerated hereunder:-
- a. FIR No. 49/2021, under Sections - 2(1B)(A) of arms Act, Police Station Palata Vibar, Gurugram and on dated 03-11-2023 charge sheet U/s 173 Cr.P.C is submitted in the Ld. Trial Court and next date of the case is 14-11-2023.
 - b. FIR No. 646/2014, under Sections 148/149/323 IPC, Police Station Sector-10A, Gurugram, on dated 13-09- 2023, petitioner was acquittal in this FIR by the Ld. Trial Court.
 - c. FIR No. 744 dated 16.11.2015, under Sections 148/149/323/325/452/506 IPC, Police Station Sector-10A, Gurugram and petitioner was acquittal in this FIR by the Ld. Trial Court.
 - d. FIR No. 183/2016, under Sections 147/148/149/323/427/506 IPC, Police Station Sector-10A, Gurugram.
 - e. FIR No. 773 dated 30/10/2017, under Sections - 25/54/59 Arms Act, Police Station - Sector-10A, Gurugram and the case is fixed for Prosecution evidence and the next date is 20-11-2023.
 - f. FIR No. 481 dated 19.11.2017, under Sections- 323/251/506/34 IPC and Section 25 of Arms Act, 1959, Police Station- Kherki Daula, District-Gurugram and the case is fixed for Prosecution evidence and the next date is 19-04-2024.
 - g. FIR No. 1352 dated 23.07.2019, under Sections- 302/120B/34 IPC and Section 25 of Arms Act, 1959, Police Station- Shivaji Nagar, Gurugram and the case is fixed for Prosecution evidence and the next date is 19-12- 2023.
 - h. FIR No. 346 of 2019, under Sections 399/402 IPC and Section 25 of Arms Act, 1959, Police Station- Kherki Daula, District Gurugram and the case is fixed for appearance and the next date is 05-12-2023.

- i. FIR No. 235 dated 21.08.2020, under Sections 302/307/148/149/216 IPC and Section 25 of Arms Act, 1959, Police Station 9A Gurugram (triple murder) and the case is fixed for stage of prosecution evidence and the next date is 15-11-2023.
 - j. FIR No. 251 dated 08.10.2020, under Sections 186/353/307/34 IPC and Section 25 of Arms Act, 1959, Police Station - SPL Cell, Delhi and the case is fixed for prosecution evidence and the next date is 08-01-2024.”
- 4. Counsel for the petitioner seeks bail on the following grounds:-
 - i) That initially, the petitioner was named as one of the assailants who was present at the spot but later on, the scene of occurrence was changed and he was shown to be present at the house of co-accused and was named as the conspirator of the entire incident. Thus, the petitioner is alleged to be a conspirator under Section 120-B IPC;
 - ii) The next contention on behalf of the petitioner is that there are 75 witnesses in this case, including 10 private witnesses, out of which, only 4 witnesses have been examined and 6 witnesses are remaining;
 - iii) In the entirety, the contention on behalf of the petitioner is that in the earlier version, the petitioner was shown at the spot, but later on the police changed the entire incident while recording statements under Section 161 CrPC and showed the petitioner not at the spot and was substituted by one Rajiv Kataria. Thus, the entire version is incorrect.
- 5. The State has opposed the bail on the ground that (i) the petitioner is a hard-core criminal and there are 10 more cases against him, though he has been released on bail in every case and in case he is released on bail, in the present case, he shall again indulge in such criminal acts; (ii) It was a triple murder case, and in addition to that, there was an attempt to murder another person. (iii) State’s counsel has further submitted that they have sufficient evidence against the petitioner to be the main accused at whose instance the entire occurrence had taken place. He had purposely stayed away from the spot and got every activity done at his back and had also role in misleading the initial information, which he manipulated through his tactic, due to which, initially, his name was mentioned in the FIR. It has been further submitted by the State’s counsel that it was a case of revenge killing and the petitioner is a dreaded and a hard-core criminal and a mastermind in the present case and in case, he is released on bail, he would certainly pose a serious threat to the society, community and the State as well.

6. I have heard learned counsel for the parties and gone through the bail petition as well as the reply filed by the State. In my analysis, simply because some of the witnesses have not supported the prosecution’s version, would not absolve the petitioner from entire allegations. The conspiracy had been hatched in utmost secrecy. He has been assigned the role of main conspirator and the main accused. Simply because in FIR, instead of Rajiv Kataria, Amit Kumar (petitioner) was named initially, would not show that the entire prosecution case has to be thrown away on this ground alone. Any further discussion on the appreciation of evidence would certainly prejudice the case of the prosecution, and as such, this Court refrains from making any such observation or comment. Thus, in the entirety of facts and circumstances of the case and considering massive criminal history of the petitioner and his likely threat to the witnesses, society and community, the petitioner is not entitled for bail.

7. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

The petition is dismissed. All pending applications, if any, stand closed. However, considering the petitioner's right to speedy trial coupled with the pre-trial incarceration, this court requests the concerned trial court to expedite the trial.

(ANOOP CHITKARA)
JUDGE

November 28, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes