

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

213

2023:PHHC:051752

CRM-M-57169-2022

Date of Decision: 13.04.2023

Sumit @ Fassiya

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present Mr.Gopal Sharma, Advocate
for the petitioner.
Ms. Sheenu Sura, DAG, Haryana.

MANJARI NEHRU KAUL, J(ORAL)

The petitioner is seeking concession of bail under Section 439 Cr.P.C in case FIR No.448 dated 22.09.2021, under Section 346 IPC (later on added Sections 302,201 and 34 IPC and 25/54/59 of Arms Act) registered at Police Station Kurukshetra University, District Kurukshetra.

2. Learned counsel appearing for the petitioner *inter alia* contends that the case in hand rests on circumstantial evidence and motive to commit the murder of deceased Farooq, which plays a prominent role in such like cases has not been attributed to the petitioner but to co-accused Nitesh. He submits that as per allegations levelled in the FIR which has been annexed as Annexure P-1, the deceased Farooq along with his wife and children were found missing from their house in village Amin, for almost 20 days and it was in the above background, a FIR was registered by complainant Murari (brother-in-law of deceased) on 22.09.2021 wherein no suspicion was raised qua the involvement of any person

Learned counsel has further drawn the attention of this Court to Annexure P-4, which is the disclosure statement dated 26.09.2021 of co-accused Shabnam (wife of deceased Farooq). He submits that in the said disclosure statement the motive to commit the murder of deceased Farooq was her illicit relations with co-accused Nitesh, which had come to the knowledge of her deceased husband. Hence, she along with her paramour accused Nitesh planned to eliminate the deceased at her house in village Amin. It was also stated therein that she along with accused Nitesh had killed Farooq with a knife and thereafter buried his dead-body after removing all other traces of crime. Thereafter, she along with co-accused Nitesh and her children moved to Delhi and started staying in a rented house.

Learned counsel has also drawn the attention of this Court to the disclosure statement of accused Nitesh (Annexure P-3) dated 30.09.2021, wherein also there was no mention muchless qua any role played by the petitioner in the crime in question. It has been submitted by the learned counsel that the contents of Annexure P-3 corroborated the statement given by co-accused Shabnam in Annexure P-4. However, subsequently, co-accused Nitesh again made a second disclosure statement (Annexure P-2) dated 02.10.2021, wherein, for the first time he introduced the petitioner as being an accomplice to the crime in question and having inflicted stab wounds on the person of the deceased along with him.

Learned counsel for the petitioner has thus vehemently argued that in the above facts and circumstances coupled with the fact

that it was a matter of record that no recovery of the weapon of offence allegedly used in the crime in question was either effected from the petitioner nor was there any witness of last seen, it was evidently a case of false implication, moreso, when the petitioner was not in any way related or connected with either of the two co-accused. He submitted that evidentiary value of the second disclosure statement (Annexure P-2) dated 02.10.2021, on the basis of which the petitioner had been nominated as an accused was admittedly of a weak nature.

Learned counsel has thus, prayed that since the petitioner has been in custody for more than one year and six months having been arrested on 03.10.2021, his further incarceration in the case in hand would serve no useful purpose as only four prosecution witnesses out of the 44 cited have been examined till date. Hence, trial shall take considerable time to conclude.

Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, on instructions, has submitted that no doubt in the first two disclosure statements made by accused Shabnam dated 26.09.2021 (Annexure P-4) and accused Nitesh dated 30.09.2021 (Annexure P-3), the petitioner had not been named nor any role attributed to him in the crime in question, and the motive to commit the crime lay with the co-accused Nitesh, however, in the said second disclosure statement made on 02.10.2021, accused Nitesh had specifically named the petitioner and also stated that both of them had travelled from Delhi to village Amin to carry out the crime in question for which a deal of Rs.25,000/- was struck with the petitioner.

Learned State counsel was not able to dispute that no recovery much-less of the weapon of offence was effected from the petitioner.

On a pointed query put to the learned State counsel qua the the antecedents of the petitioner, she, on instructions, submits that the petitioner is not involved in any other criminal case.

I have heard learned counsel and perused the relevant material on record.

Petitioner has been in custody since 03.10.2021 and only four prosecution witnesses stand examined till date. The trial will thus take considerable time to conclude as 40 prosecution witnesses remain to be examined. The petitioner was nominated as an accused in the second disclosure statement made by co-accused Nitesh, wherein for the first time he attributed the role played by the petitioner in the crime in question. Hence, in the facts and circumstances as enumerated hereinabove, this Court deems it fit to extend the concession of bail to the petitioner. The petition is allowed and the petitioner is admitted to bail to the satisfaction of Chief Judicial Magistrate / Trial Court / Illaqa Magistrate, concerned.

However, anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

13.04.2023
mamta

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No