

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

234

2023:PHHC:160762

CRM-M-56940-2023

Date of decision: December 14th, 2023

Amit Sharma @ Jhabi

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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

Mr. Mohit Kapoor, Additional Advocate General, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

Petitioner is seeking the concession of bail under Section 439 of the Code of Criminal Procedure, 1973 in case FIR No.125 dated 26.07.2016 under Sections 302, 307, 148, 149, 120-B of the IPC (Sections 380, 411, 450 were added later on) and Section 25 of the Arms Act, registered at Police Station Sadar, Amritsar.

2. Learned counsel for the petitioner, *inter alia*, submits that after the previous petition under Section 439 of the Cr.P.C. was dismissed on 16.09.2021, all the co-accused, who had allegedly participated in the crime in question, had been enlarged on bail, coupled with the fact that two material witnesses, who were also eyewitnesses to the twin murders of Hardev Singh and Raju, had not supported the case of the prosecution during trial, as a result of which they both were declared hostile. It has further been submitted that even otherwise, the only role attributed to the petitioner in the crime in question was of having fired in the air with .12 bore pistol, which he was carrying at the relevant time.

3. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has not disputed that the fatal injuries have not been attributed to the petitioner but to co-accused Shubham, who is still in custody. Learned State counsel, on further instructions, has also not disputed that the only role attributed to the petitioner in the crime in question was of having accompanied the co-accused and for having fired in the air. Learned State counsel has still further not disputed that both the eyewitnesses, who in the case in hand would be the most material witnesses, had been declared hostile during trial.

4. On a pointed query put to the learned State counsel, he on instructions, has informed the Court that as on date, only 18 prosecution witnesses out of the 38 cited, have been examined and the next date of hearing before the trial Court is 19.12.2023 when some more prosecution witnesses are likely to be examined. He has, however, brought to the notice of this Court that the petitioner is involved in some other criminal cases including under the NDPS Act and various offences under the Indian Penal Code just like the other co-accused, who have since been extended the concession of bail.

5. I have heard learned counsel for the parties and perused the material placed on record.

6. The petitioner has been in custody since 22.10.2016 and the trial has still not concluded; there is no likelihood of the trial concluding anytime in the near future in view of the fact that as many as 20 witnesses still remain to be examined. In addition, the material witnesses have already been examined and as not disputed by the learned State counsel, have failed to support the case of the prosecution.

7. In the facts and circumstances as enumerated hereinabove, this Court deems it fit to extend the concession of bail to the petitioner. The instant petition is allowed. The petitioner be admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

8. Needless to say, in case the petitioner misuses the concession of bail granted to him, the State would be at liberty to seek cancellation of the same.

December 14th, 2023
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No