

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

CRM-M-59931-2022

Date of Decision:-21.03.2023

Mohan Swaroop.

.....Petitioners.

Vs.

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Sarfaraj Hussain, Advocate for the Petitioners.

Mr. Neeraj Poswal, Assistant Advocate General, Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The petitioner has filed this third petition under Section 439 Cr.P.C. for grant of regular bail in case FIR No.132 dated 25.04.2019 under Sections 302, 34 and 201 IPC, Police Station City Bhondsi, District Gurugram.

2. The learned State counsel has filed a reply dated 20.03.2023.
3. Heard on the bail petition.
4. The aforesaid case was registered at the instance of Nepal S/o Sewakpal. As per version of the prosecution, the complainant was working in a private company in Udyog Kunj and lived there. His father was working as Ferry on the junk shop of Kailash. Puttan s/o Ramjani was also working as Ferry, along with father of the complainant. However, Puttan had died in a road accident on the night of 17/18.04.2019. Thereafter, the father of the complainant had proceeded to his village. On return from the village on 24.04.2019, at about 11.00 p.m., Kailash, his brother Ashok (granted bail

vide order dated 24.02.2023 in CRM-M-57242-2022), Mohan Swaroop (petitioner), Chanderpal, Sukhdev and a driver, whose name, the complainant never knew, had come and asked the father of the complainant, to accompany them, as the police had called for an enquiry, vis-a-vis, the death of Puttan. Thereafter, the father of the complainant had accompanied the aforesaid persons, who had gone to the office of Sukhdev. When the father of the complainant had not returned till morning, then the complainant had gone to the office of Sukhdev, where the office was found closed. Upon knocking for a considerable time, the gate was not opened. From inside the gate, Kailash and Ashok had informed that the keys of the gate were not available and asked the complainant to come later on. They did not give a reply relating to the whereabouts of the father of the complainant. Then the police was called on the phone by the complainant and later on, after opening of the gate, Kailash, Ashok, Mohan Swaroop (petitioner) and Chanderpal were found present in the office and the father of the complainant was lying dead inside. It is further stated by the complainant that there were injury marks on his father's body. The aforesaid persons and their accomplices, had killed his father by beating him with sticks.

5. It is submitted by the learned counsel for the petitioner that petitioner has been falsely implicated in the present case. He had no role to play in the occurrence in question. In fact, the petitioner was in custody since 09.06.2019. The challan was presented in the Court, but the trial was going on at a snail's pace. Out of 32 cited witnesses, 11 witnesses have been examined till date. The complainant namely Nepal had already been examined as PW-2. However, he has given contradictory versions, with regard to the manner of going to the spot of occurrence and the presence of other accused persons, together with the petitioner at the spot. It is submitted

that there are contradictions, vis-a-vis, the material assertions of the prosecution version. Sukhdev Singh, in whose office, the alleged occurrence had taken place, had since been granted the benefit of regular bail, after about 1 years and 10 months detention. Similarly Ashok had also been granted bail vide order dated dated 24.02.2023 in CRM-M-57242-2022. As such, a prayer has been made for the grant of bail to the petitioner.

6. On the other hand, the learned State counsel has refuted the claim of the petitioner for grant of bail. He submits that allegations against the accused are of serious nature. The complainant had specifically named the petitioner as an accused and he was present besides the dead body, when the door of the place of the occurrence was got opened. Even though, the statement of the complainant has been recorded, but an appreciation of his statement, cannot be made at this stage, as that would hamper the prosecution version. Therefore, a prayer has been made for dismissal of the petition.

7. A Status report dated 20.03.2023 has been filed. A perusal of the report would reveal that the petitioner is in custody since 09.06.2019, till date, i.e. for about 3 years 10 months approximately. There are 32 cited witnesses, out of which only 11 witnesses have been examined. Even though, much emphasis has been laid upon the fact that Sukhdev Singh, from whose office, the alleged dead body was recovered has been granted bail vide order dated 06.12.2022, however, it is pertinent to mention that it was in pursuance of supplementary statement, that Sukhdev Singh was nominated as accused. The complainant, while in the witness box, has not supported the prosecution version, vis-a-vis, the role of Sukhdev Singh. In these circumstances, the fact, of release of accused Sukhdev Singh, is not of much help to the present petitioner.

8. However, the fact remains that the petitioner is in custody since 09.06.2019. Out of 32 cited witnesses, only 11 witnesses have been examined. The complainant has already been examined as PW-2. Co-accused Ashok has been granted bail vide order Annexure P-9. Even though, a reference has been made to the testimony of the complainant, got recorded, during the course of trial, with regard to there being contradictions on the material particulars of the case, however, at this stage, intentionally the same is not being appraised, lest it hampers the case of either side.
9. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-**Mohan Swaroop** son of Sh. Het Ram is ordered to be released on bail subject to their furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.
10. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

March 21, 2023
Vinay

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