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

**CRM-M-60993-2022 (O&M)
Date of Decision: 10.01.2023**

SUMIT KUMAR @ NONI

.. Petitioner**Vs.**

STATE OF PUNJAB

..Respondent**CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ**

Present: Mr. Piyush Sharma, Advocate for the petitioner.

Mr. Gurpreet Singh, Addl. A.G., Punjab.

...

Manoj Bajaj, J. (Oral)

Petitioner has prayed for grant of regular bail under Section 439 Cr.P.C, pending trial in case FIR No.211 dated 29.11.2020 registered under Sections 302 and 34 IPC, 1860 (Subsequently Section 34 deleted and Sections 148 and 149 IPC added) at Police Station Phase-1, District SAS Nagar, Punjab. The petitioner is in custody since his arrest on 20.12.2020.

The FIR was lodged on the basis of statement made by complainant-Nisha and the allegations as contained in the order dated 23.04.2021 while deciding regular bail application of the petitioner read as under:

“Succinctly stated the present FIR was registered on the statement of Nisha on the allegations that she married to Kuljinder Singh about 5 years ago. Her husband is in the business of sale and purchase of cars. Her husband went to his work as usual. A friend of her husband informed her telephonically that at about 4:00 PM near the Kali Mata Mandir, her husband involved in scuffle with some unknown persons and he got injured by getting a stab with some sharp edged thing in his chest and had been got admitted at Civil Hospital, Phase- VI, SAS Nagar, (Mohali). Thereafter, she reached at Civil Hospital, Phase-VI, SAS Nagar, (Mohali) and she came to know that her husband had died due to said injury given by some unknown persons and his dead body had been kept at mortuary. She identified the dead body of her husband

Kuljinder Singh. On the statement of complainant Nisha offences under Section 302, 34 of IPC was found to be made out and FIR was registered.”

Learned counsel for the petitioner has argued that the FIR was registered on the basis of a hearsay information received by the wife of the victim through his friend, but even his name has not been mentioned in the FIR. He submits that later on, the police had recorded statements of Arun s/o Bhalu Ram and Sunny Sharma s/o Sohan Lal under Section 161 Cr.P.C. on 09.12.2020, after approximately 10 days from the date of incident dated 29.11.2020, who have claimed themselves to be eye-witnesses, but their stand becomes doubtful on account of delay in recording their statements. Learned counsel has further argued that the victim died of a knife blow and the same is attributed to the co-accused, namely, Raja @ Raj Chhote, who along with three other co-accused is yet to be arrested. He submits that as per prosecution, the petitioner had caught hold of the victim, therefore, considering his role as well as the custodial period of two years, he be released on regular bail.

Learned State counsel assisted by ASI Gurmohan Singh Sidhu, has opposed the prayer on the ground that the petitioner was member of the unlawful assembly and participated in the crime. However, it is not disputed by learned State counsel that the fatal injury resulting in death of the victim is attributed to the co-accused Raja @ Raj Chhote. He, on instructions further states that in all there are fifteen witnesses and only one witness has been examined so far. He, on instructions states that the charges were framed on 30.12.2021, but till date only one prosecution witness has been examined out of total fifteen witnesses. Learned State counsel prays that the bail petition be dismissed, as other material witnesses including Sunny Sharma are yet to be examined.

At this stage, learned counsel for the petitioner has argued that one of the alleged eye-witnesses, namely, Arun has already been examined as PW-1 and in his deposition, he specifically deposed that he had made his statement to the police regarding this occurrence on the next day of the incident, but the said statement is recorded by the police on 09.12.2020. Apart from it, the witness had allegedly taken the victim to the hospital, but there is no record in this regard, much less showing presence of this witness at the hospital.

After hearing the learned counsel for the parties and considering the above background, particularly the custodial period of the petitioner, this Court is of the considered opinion that the further detention of the petitioner behind the bars may not be necessary for any useful purpose, as the trial is likely to consume considerable time to conclude. Apart from it, the material witnesses are either closely related to the victim or police officials and at present there does not seem to be any possibility of their being won over.

Resultantly, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court concerned.

The petition is allowed.

10.01.2023
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No