

218

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

**CRM-M-59255-2023 (O&M)
Date of decision : 30.11.2023**

AASHISH ALIAS MOHIT

....Petitioner

Versus

STATE OF HARYANA

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Samay Singh Sandhawalia, Advocate
for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.91 dated 04.03.2021 registered for the offences punishable under Sections 302, 216, 120-B, 379-B, 148 and 149 of IPC and Section 25 of Arms Act, 1959 (Section 120-B IPC added later on) at Police Station Gohana City, District Sonipat.

2. Custody Certificate of the petitioner has been filed today in Court. The same is taken on record.

3. FIR came into being on the statement made by Vijay father of the deceased Rohit who alleged as under :

“xxx I am resident of village Rabhdaand I am doing agriculture work. I have two sons. The elder one is Mohit and younger is

Rohit who is 20 years old Rohit is unmarried and preparing for the job Today, I was present at my village and I received information that firing took place on my son Rohit and his companion Sahil son of Suresh caste Baragi resident of SP Majra near drain No. 8 in Gohana City and my son was brought in Government Hospital Gohana. After receiving that information, I alongwith my family members reached at Government Hospital, Gohana where I came to know that my son Rohit had been expired and another boy namely Sahil son of Suresh also expired in PGI Khanpur. I have verified at my own level that my son Rohit and his companion Sahil were going on motorcycle bearing No.HR-11M-1032 near the drain No. 8, Vishnu Nagar, Gohana then my co-villagers namely Supari son of Sattu, Tunda, Sanni son of Rajbir, Rahul son of Kidara, Baljeet son of Karan Singh residents of village Rabhda and the nephew of Rasia Pahalwan Kuku and their others companion fired shot towards them and killed. That four months ago our co-village Rashia Pahalwan killed in village. The family members of Rashia due to that grudge killed my son Rohit and his companion Sahil by the shot and run away from there and also took the bearing No. HR-11M-1032 with them. Legal action be taken against the above mentioned Supari, Sanni, Rahul, Baljeet, Rashia nephew Kuku and others. Sd/-xxx”

4. Rahul @ Nanha who was named in the FIR was arrested on 5th of March 2021 and on 28th of April, 2021 he is stated to have suffered a confessional statement while in police custody stating as under :

“In the presence of the following witnesses, in the above said case, the accused Rahul @ Nanha above said during police custody, without any greed, undue influence and with his consent, made his confession statement that, "About 6 months ago some people in our village had killed Shrispal Rasia

Pehlwan. In concern with this some people from the village were arrested as well. Me and my friend were very sad regarding the murder of Rasia Pehlwan because we used to spend time together and he was our good friend. We had suspicion that Rohit son of Vijay Singh resident of Rabdha village was involved in the murder of Rasia Pehlwan as he used to taunt me and my friends that we have finished Rasia Pehwlan and when we get the opportunity we will finish his friends well. With Rohit, Sahil son of Suresh resident of Sikandarpur Majra used to be along and he too used to taunt us. After getting irritated from their taunts me , Sunny @maya Son of Rajbir, Ankit @ Supari son of Satbir, Baljeet brother of Rasia Pehlwan, Rasia Pehlwan nephew Manish @ Kuku son of Dalbir and Aashish son Jwahra resident of Rabhra and Krishan son of Rajendra made a plan that we will kill Rohit and Sahil where ever we see them .On 04.03.2021 around 10 AM in the morning Ankit @ Supari, Krishan resident of Sikandarpur on his Splendor Motorcycle and me, Manish @ Kuku and Aashish on Apache Motorcycle and sunny on deluxe motorcycle went to Gohana city looking for Sahil and Rohit and me, Krishan, Sunny, Manish @ Kukku, Ankit a Supari had pistol in our 2 hands when near Meham road near the market we saw Rohit and Sahil on a bullet Motorcycle HR 11 AM 1032.Sahil was riding the bike and Rohit was sitting at the back. We started following them. Near drain no. 8 Vishnu Nagar, Gohana we reached behind them and then near drain no 8 Vishnu Nagar main street we stopped our splendor motorcycle in front of their bullet bike and before they could handle themselves all of us with our 2 weapons opened fire on Rohit and Sahil. After being shot Rohit got of the bike and tried to escape from the back side however he fell down after a while.AT the same time Sahil also left the bike and tried to run away but he too stumbled after covering a little distance. After firing the bullet I picked up the Bullet motorcycle belonging to Rohit and Ankit @ Supri sat behind me and Sunny @maya on his Splendor Motorcycle along with weapons ran from

the spot. Later we took the Bullet from Sunny @maya and gave him the Splendor Motorcycle we were on. We decided that from here we will go on 2 separate routes. From there I along with Ankit @ Suppari on the splendor bike from the Kacha road near drain no. 8 started to proceed towards Rohtak road and in fear of police I hid the 32 bore country made pistol, 2 live cartridges and motorcycle in the bushes near the Kacha road of drain no 8 and then both of us started to proceed towards Rohtak walking. I can get the place demarcated where we shot Rohit and Sahil and I can also get the place demarcated where I hid the country made pistol, cartridges and motorcycle used in the incident demarcated and recovered. This country made pistol was given to me by Rasia Pehlwan @ Shrishpal who was murdered about 7 months ago. The disclosure statement of the accused has been recorded and his signatures along with signatures of witness are taken. xxx”

5. Pursuant to the disclosure made by Rahul @ Nanha the present petitioner was nominated and was arrested on 1st of June, 2021 since when he is in custody. As per custody certificate, the petitioner has undergone actual custody of 1 year 11 months and 26 days. Counsel for the petitioner submits that the confessional statement of co-accused while in police custody that too after more than 55 days of arrest cannot be believed and would be barred by Sections 25 and 26 of the Evidence Act. It is being further contended that even if the said disclosure made by co-accused is taken to be true there is no allegation *qua* the petitioner of having fired upon the deceased. Even as per the disclosure it was only co-accused Rahul @ Nanha, Krishan, Sunny, Manish @ Kukku and Ankit @ Supari who were

holding pistols.

6. Per contra, State Counsel submits that the petitioner was part of unlawful assembly that led to the present murder. The allegations at this stage cannot be splitted in the manner the petitioner suggests. The petitioner having participated actively in the occurrence which led to double murder does not deserve grant of bail. It has been further contended that the petitioner is facing three more cases including one under Section 307 IPC and other under Section 365 IPC.

7. Having heard rival contentions of counsels representing the parties and after going through records of the cases, it is evident that the FIR came into being on the statement made by father of the deceased who is not eye-witness to the occurrence. He named five culprits which does not include name of the petitioner. The present petitioner has been nominated on the disclosure made by co-accused while in police custody. Apart from the said disclosure made by co-accused and the alleged confessional statement made by the present petitioner, State Counsel admits that there is no other evidence against the petitioner.

8. In view of above, without commenting on the merits of the case, keeping in view the incarceration already suffered by the petitioner, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

November 30, 2023		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No