

CRM-M-269-2024

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2024:PHHC:057288

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-269-2024

Date of decision : 26.04.2024

Ramesh

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Pratham Sethi, Advocate
for the petitioner.

Mr.Naveen Singh Panwar, DAG, Haryana.

VIKAS BAHL, J.(ORAL)

1. This is a third petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.0757 dated 09.11.2020 registered under Sections 302, 201, 34, 452, 120-B IPC, 1860 at Police Station Sonipat City, District Sonipat.

2. Learned counsel for the petitioner has submitted that the petitioner has been in custody since 21.02.2021 (more than 3 years and 1 month) and the trial has still not concluded. It is submitted that on 11.10.2023, the petitioner was permitted to withdraw the earlier bail application with the observation that the State was directed to produce remaining witnesses on 20.11.2023 and they were to be examined as expeditiously as possible and liberty was granted to the petitioner to file regular bail in case the prosecution evidence was not concluded on or before 11.12.2023. It is submitted that till date the prosecution evidence has not concluded and reference has been made to the zimni orders dated

29.02.2024, 11.03.2024 and 19.04.2024 to show that no PW had appeared before the trial Court on the said dates and evenailable warrants have been issued and the case is now fixed for 22.05.2024. It is submitted that on ground of period of custody alone, the petitioner deserves the concession of regular bail. It is argued that FIR no.0301 dated 24.09.2020 (Annexure P-3) with respect to the incident in question was registered at Police Station Singhawali Ahir, District Bagpat on the complaint of Ramphal Singh, father of the deceased and the petitioner was not named in the said FIR and that subsequently, the wife of the deceased Jitender Singh was arrested and on the basis of her disclosure statement, the investigating agency came to the conclusion that the offence has been committed in Sonipat and accordingly, FIR no.0757 dated 09.11.2020 was registered at Police Station Sonipat City, District Sonipat and the petitioner as well as Pooja were named as accused. It is argued that the case as per challan is based on circumstantial evidence and as per the said challan, there was no eye witness but however when the case was set up for trial, the son of the deceased i.e., Master Akshit aged 11 years had given evidence to the effect that he had seen three-four persons murdering his father through the window and could identify two persons i.e., the present petitioner and Pooja, out of the said persons. Learned counsel for the petitioner has pointed out that the said Akshit in his statement under Section 161 Cr.P.C. which was recorded on 09.01.2021 after a period of more than 2 months from the date of registration of the FIR i.e., 09.11.2020 and after a period of more than 3 months from the date of occurrence, has not stated that he had seen the accused. Learned counsel for the petitioner has handed over a copy of the statement of the said witness Akshit during the course of arguments, which has been taken on record as

Mark A. Reference has been made to the cross-examination of said Akshit to show that Akshit was confronted with the statement made before the police and also the fact that before the police he had never stated that he had seen 3/ 4 persons committing murder of his father. It is argued that the said witness has apparently been introduced subsequently by the prosecution. It is further argued that at any rate, the material witnesses have been examined and thus, the question of the petitioner influencing or threatening them does not arise and only two police officials are left to be examined and thus, no purpose would be served by keeping the petitioner in further incarceration.

3. Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the present petitioner was named in FIR no.0757 dated 09.11.2020 and as per the case of the prosecution, the said petitioner had an affair with Pooja, wife of the deceased and thus, the petitioner and Pooja had planned the murder of the deceased. It is submitted that Akshit son of the deceased has been examined as PW-16 and in his examination-in-chief he had stated that from the window he had seen 3-4 persons committing murder of his father, out of which he could identify the petitioner and Pooja and had fully supported the case of the prosecution. It is further submitted that two witnesses are left to be examined and that the petitioner does not deserve the concession of regular bail.

4. This Court has heard learned counsel for the parties and has perused the paper book.

5. It is not in dispute that the petitioner has been in custody since 21.02.2021 (more than 3 years and 1 month). The first bail application of the petitioner was dismissed as withdrawn at that stage on 14.12.2022. The

second bail application filed by the petitioner was disposed of on 11.10.2023 in the following terms:-

“4. Keeping in view the above facts and circumstances, the petitioner is permitted to withdraw the present petition, at this stage with the following observations:-

(i) The State is directed to produce remaining witnesses on 20.11.2023, which is the next date of hearing in the case before the Trial Court;

(ii) The Trial Court is directed to examine the witnesses produced by the State on 20.11.2023 or immediately thereafter by giving short dates;

(iii) Counsel for the accused in the Trial Court is requested to assist the Court in the expeditious examination of the remaining witnesses.

(iv) Liberty is granted to the petitioner to file a fresh petition for grant of regular bail in case the prosecution evidence is not concluded on or before 11.12.2023. In case any such application is filed the same would be considered independently after considering the pleas of the parties.

5. All the pending miscellaneous applications, if any, also stand disposed off.”

6. It is not in dispute that in spite of the said order, the State has not been able to examine all the witnesses and the prosecution evidence has not concluded before 11.12.2023. On 29.02.2024, 11.03.2024 and 19.04.2024, no PW was present and on 19.04.2024 bailable warrants have been issued for seeking presence of SHO Devender Kumar and ASI Somdutt. The said zimni orders are reproduced hereinbelow:-

“Present: Shri D.S. Boora, learned PP for the State assisted by Shri Vikas Kundu, Advocate for complainant.

Accused Pooja and Ramesh in custody in Sonapat and Panipat jail (through VC), represented by Shri R.S. Dahiya, Advocate and Shri S.P. Verma, Advocate.

Accused Dilshad and Afsar Khan on bail with Shri S.P. Verma, advocate.

No PW is present. Presence of PWs ASI Somdutt and Insp. Devender Kumar could not be secured due to Farmer Agitation and so, PWS ASI Somdutt and Insp. Devender Kumar be again summoned through special messenger for 11.03.2024. Presence of accused, who are in custody, shall be marked through VC till further order.

(Dr. Sanjeev Arya)
Additional Sessions Judge, Sonapat
(UID No. HR0246)

Date of Order: 29.02.2024

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Present: Sh. D.S.Boora, Ld. PP for the State assisted by
 Sh.Vikas Kundu, Adv. For complainant.

Accused Pooja and Ramesh in custody in Sonapat
and Panipat Jail (through VC) represented by
Sh.. R.S.Dahiya, Adv. And Shri S.P.Verma, Adv.

Accused Dilshad and Afsar Khan (exemption) on
bail with Sh. S.P. Verma, Adv.

No PW is present. However, exemption applications on behalf of accused Afsar Khan filed. Heard. Presence of accused Afsar Khan is exempted only for today. Summons issued to PW ASI Som Dutt and Inspector Devender received back unserved. Let PWs ASI Som Dutt and Inspector Devender be again summoned for 19.04.2024. Presence of accused, who are in custody shall be marked through VC till further order.

(Dr. Sanjeev Arya)
Additional Sessions Judge, Sonapat
UID No. HR0246)

Date of Order: 11.3.2024

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Present: Sh. D.S.Boora, Ld. PP for the State assisted by
 Sh. Vikas Kundu, Adv. For the complainant.

Accused Pooja and Ramesh in custody in Sonapat
and Panipat Jail (through VC) represented by
Sh.R.S.Dahiya, Adv. And Sh. S.P.Verma, Adv.

Accused Dilshad and Afasar Khan on bail with
Sh.S.P.Verma, Adv.

No PW is present. Inspector / SHO Devender Kumar reported to be served on his WhatsApp and ASI Somdutt reported to be served through MHC, but they did not appear. Let their presence be

secured through B/w of Rs.10,000/- each for 22.05.2024. Presence of accused, who are in custody, shall be marked through VC till further order.

*(Dr. Sanjeev Arya)
ASJ, Sonapat
(UID No. HR0246)*

Date of Order: 19.4.2024”

A perusal of the above zimni orders would show that now the case has been adjourned to 22.05.2024. It would also be relevant to mention that the petitioner was not named in FIR no.301 dated 24.09.2020 which was registered in State of U.P. and the petitioner has been named in FIR no.0757 dated 09.11.2020 which was registered in Police Station Sonipat City, District Sonipat, after it was found that the incident had taken place in Sonipat. It is the case of the petitioner that the case is based on circumstantial evidence as per the report under Section 173 Cr.P.C. as there was no eye witness in the present case and it is only at the time of recording of evidence before the trial Court that Akshit aged 11 years, son of the deceased has been examined as PW-16 and for the first time in his evidence, he has stated that he had seen from the window 3/4 persons murdering his father and he had identified two accused i.e, the petitioner and Pooja. A perusal of the cross-examination of the said witness (at page 118 and 119 of the paper book) would show that the said Akshit was confronted with respect to the said statement made in the examination-in-chief with the statement made before the police, where the said fact was not recorded. It is further the case of the petitioner that perusal of the vernacular of the statement of said Akshit dated 09.01.2021, which has been handed over by learned counsel for the petitioner during the course of argument and has been taken on record as Mark A would also show that in the said statement,

Akshit has not stated that he had seen the accused persons killing the deceased and the statement of said Akshit has been recorded on 09.01.2021 after a delay of more than two months from the date of registration of the FIR i.e., 09.11.2020 and after a delay of more than 3 months from the date of occurrence. Thus, there are arguable points in favour of the petitioner. However, this Court does not wish to give any final opinion on the merits of the case as the same may prejudice the case of either of the parties before the trial Court.

7. Keeping in view the above said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case.

8. However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

9. Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

April 26, 2024
Davinder Kumar

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