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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.1314 of 2024 (O&M)

Date of decision : 18.01.2024

Mohd. Sadev @ Mohd. Shadab & anr.

..... Petitioners

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Saqib Ali Khan, Advocate for the petitioners.

Mr. Amit Shukla, Asst. A.G., Punjab.

PANKAJ JAIN, J. (ORAL)

1 This petition has been filed under Section 439 Cr.P.C. for grant of regular bail in case F.I.R. No.177 dated 31.07.2022 registered under Sections 302/34 IPC and Sections 25 of Arms Act (later on Section 34 IPC was deleted & Section 120-B/148/149 IPC has been added) at Police Station City-I, Malerkotla, District Malerkotla.

2 FIR was registered on the statement of Akbari w/o Mohammad Akbar alleging as under :-

“Statement of Akbari w/o Mohammad Akbar, R/o Ward No.20, Navi Abadi, Outside Sihandi Gate, Malerkotla, age about 40 years, Mobile No. 98159-31786. Stated that I am a resident of above mentioned address and am a housewife. My marriage was solemnized with Mohammad Akbar s/o Fateh Mohammad, resident of Navi Abadi, Outside Sirhandi Gate around in the year 2005. I have two sons and one daughter. Elder son is Mohammad Isa aged around 16 years, younger to him is daughter Mariyam, aged around 13 years and younger to her is son Mohammad Ujur aged around 10 years. My husband runs Akbar Gym in Kubha Colony, Opposite Indasa Factory on Ludhiana Bypass Road, Malerkotla. I and my

husband often go to my husband's aforesaid gym. As usual, today on 31.07.2022 at around 7.30 A.M. we along with my son Mohammad Ujjair on our car make Dezire whose number is not known to me, the car was being driven by my husband, on which we had gone to the aforementioned gym. We had opened the gate of the aforesaid gym and were setting the things in place inside the gym, when at around 7.45 A.M., an unknown persons had came inside the gym who had called my husband Mohammad Akbar to him by calling him and on being called upon by that unknown persons, my husband had gone near him. On which, the aforesaid persons had at once taken out weapon out of his dab and had fired bullet in my husband Mohammad Akbar's chest on the left side near the heart. On which, my husband had fell down and the unknown person alongwith his weapon alongwith another unknown person accompanying him who was standing outside the gym had run away from the spot. After that, I had called up my brother in law Abdul Rashid s/o Fateh Mohamad from my phone on his phone. After sometime, Abdul Rashid had also reached there. Then Abdu Rashid had put in my husband in our same car in which we had reached the gym in the morning and had got him admitted in Civil Hospital, Malerkotla. At Civil Hospital, Malerkotla, the doctor declared dead my husband. Sd/- Akbari w/o Mohammad Akbar(in Urdu). Sd/- INSP Harjinder Singh, SHO, Police Station City1, Malerkotla.”

3 Thereafter Mohammad Rijwan son of the deceased is alleged to have made statement after registration of FIR alleging as under :-

“I am now doing IELTS. My father Mohammad Akbar S/o Fateh Mohammad R/o Navi Abadi, Outside Sirhandi Gate, Malerkotla was killed yesterday on 31.07.2022 at around 7:45 AM by two unknown persons by firing bullets at him in Kubha Colony, Malerkotla opposite Indasa Factory, near Ludhiana Bypass, about which we had been enquiring till now. It has been found from enquiry that my father Mohammad Akbar had given a shop at Grewal Chowk, Malerkotla on rent of Rs. 5000/- per month to Wasim Iqbal alias Soni S/o Mohammad Najeer R/o Ismail Basti, Near Mana Phatak, Malerkotla. In which shop Wasim Iqbal alias Soni does the work of buying old motorcycles and selling them further in the name of NS Auto Dealers. Besides, my father Akbar Khan had give and take of around Rs. 2.5 Crore with Wasim Iqbal alias Soni since 2015. The

aforesaid Wasim Iqbal and through my father Akbar's money Wasim Iqbal had been further giving money to people on interest and has been doing cloth business. The interest on the total amount was paid by aforesaid Wasim Iqbal alias Soni to my father. Now from around 5-6 months aforesaid Wasim Iqbal had not returned any money out of the aforesaid amount taken on loan to my father Mohammad Akbar. Due to this, several times in my presence, my father Mohammad Akbar had demand back his money from aforesaid Wasim Iqbal alias Soni. But Wasim Iqbal alias Soni had been lingering on from returning money. Around one week back, at Sirhandi Gate, Malerkotla, my father Mohammad Akbar in my presence had asked aforesaid Wasim Iqbal alias Soni to return the money taken on loan. At that time Wasim Iqbal alias Soni was accompanied by his second wife Praveen's brother Mohammad Asif S/o Mohammad Akhtar R/o Chhota Khara, Malerkotla too. At that time both of them had a lot of argument with my father Mohammad Akbar. Wasim Iqbal alias Soni and his brother in law Mohammad Asif had left while threatening to kill my father Akbar Khan. Then aforesaid Wasim Iqbal and his brother in law Mohammad Asif had conspired to kill my father Mohammad Akbar. Due to this Wasim Iqbal alias Soni taking along with himself Mohammad Shadab S/o Naseem R/o Peerad P.S. Naagal, District Saharanpur and Tehmeem S/o Naseem R/o Bagra P.S. Titavi, District Muzaffar Nagar, U.P. had taken a Fortuner vehicle from Buntty R/o Malerkotla on some pretext and had gone to U.P., where he had bought and brought desi katta and alive rounds and had given it to his brother in law Mohammad Asif. It has also come to knowledge that at the time of bringing arms from U.P., Wasim Iqbal alias Soni had taken along with second wife Praveen without telling anything along with himself in the vehicle. Then on the night of 31.07.2022, Wasim Iqbal alias Soni had given a motorcycle Honda City-110 from his shop to his brother in law Mohammad Asif. That Mohammad Asif under a planned conspiracy taking along his friend Mohammad Murshad S/o Mohammad Shamshad R/o Mohalla Ballu Ki Basti, Kailo Gate, Malerkotla on the aforesaid motorcycle at 7:45 a.m. had gone to our gym in Kubha Colony, Near Ludhiana Bypass, Malerkotla and had killed my father by firing bullets at him and had ran away from the spot. Wasim Iqbal alias Soni, with the intention to usurp his money taken on loan from my father Mohammad Akbar, in connivance with Mohammad Shadab, Tehmeem, Mohammad Asif and Mohammad Murshad, had got killed my father Mohammad Akbar through his brother in law Mohammad Asif and his friend Mohammad Murshad by firing bullets. Strict action may be taken against them.”

4 Learned counsel for the petitioners relies upon order dated 04.12.2023 passed in CRM-M No.47801 of 2023 whereby the alleged main accused namely Wasim Iqbal @ Soni stands admitted to bail observing as under :-

“4 Learned counsel for the petitioner submits that the two culprits present on the scene of occurrence as per the FIR are claimed to have been identified by the prosecution and petitioner is not one of those. He further submits that apart from the aforesaid statement made by Mohammad Rijwan and Mohammad Arshad, there is no incriminating evidence against the petitioner, however, both of them when appeared before the trial Court as PW-2 and PW-3 respectively, have not supported the said theory as recorded by the prosecution in the statements made by the said witnesses under Section 161 of the Code.

5 Learned counsel for the petitioner submits that the petitioner has been in custody since 01.08.2022 and has clean antecedents.

6 Learned State counsel on instructions from ASI Balvir Singh is not in a position to dispute the aforementioned factual assertions based on record.

7 I have heard learned counsel for the parties and have gone through the records of the case.

8 Without commenting on the merits of the case and considering the incarceration suffered by the petitioner, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.”

5 Learned counsel for the petitioners thus submits that even as per the supplementary statement, the allegations *qua* the petitioners were of having accompanied the main accused Wasim Iqbal @ Soni to U.P. and once he stands admitted to bail, the petitioners will be entitled for the same being on better footings.

6 Custody certificates have been filed. The same are taken on record. As per the custody certificates, the petitioners have been in custody for about more than 1 year, 5 months and 10 days and have clean antecedents.

7 Learned State counsel on instructions from Investigating Officer is not in a position to dispute the aforementioned factual assertions based on record.

8 I have heard learned counsel for the parties and have gone through the records of the case.

9 Without commenting on the merits of the case and considering the incarceration suffered by the petitioners, the present petition is allowed. The petitioners are ordered to be released on bail on their furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

10 Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

18.01.2024
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No