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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-5673-2024 (O/M)
Date of decision : 28.08.2024

Nepal

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Ms. Kiran Verma, Advocate
for the petitioner.

Mr. Randhir Singh, Additional A.G. Haryana.

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HARSH BUNGER, J.

1. This is second petition filed under Section 439 of the Code of Criminal Procedure on behalf of petitioner (Nepal) for grant of regular bail in case FIR No.381, dated 17.10.2019, registered under Sections 302 and 201 of the Indian Penal Code, at Police Station Hathin, District Palwal.

2. The first petition (CRM-M-41784-2022) was dismissed by this Court, vide order dated 31.05.2023 (Annexure P-9).

3. Custody certificate dated 26.08.2024 of the petitioner filed by learned State counsel in Court today, is taken on record, subject to all just exceptions.

4. Succinctly, the present FIR was registered on the complaint of one Shiv Charan s/o Roshan Lal, wherein it is stated that his youngest son-Jagbir is married to Pinki d/o Ran Singh. On the night of 16.10.2019, Pinki (daughter-

in-law of the complainant) told the complainant that Jagbir went out of the house at about 09:00 P.M. and did not come back. On 17.10.2019, at about 4:30 A.M., one of the villagers, namely, Ajay, who goes for jogging; came to the house of complainant and told him that he saw Jagbir was lying unconscious near tap (close to mand) in the fields adjoining the road going from Village to Jainpur. It is further stated by Ajay (villager) that he splashed water on the face of Jagbir (son of the complainant) but he did not respond. Thereafter, the complainant along with Nepal (nephew of the complainant) went to the spot and found Jagbir lying dead on the mand. It is further stated that there were marks of strangulation on the neck and other injury marks on the body of Jagbir.

5. Learned counsel for the petitioner submits that the petitioner has not been named in the FIR and he has been falsely implicated in the present case on the basis of call details exchanged between the petitioner and the co-accused-Pinki (wife of the deceased) by alleging illicit relationship between them. Learned counsel further submits that the petitioner had no affair with the co-accused-Pinki (wife of the deceased). It is stated that no specific injury has been attributed to the petitioner and nothing has been recovered from him. It is further submitted that the prosecution witnesses have also not supported the case of the prosecution and the co-accused (Pinki) has already been granted the concession of regular bail vide order dated 23.08.2022, passed by a Co-ordinate Bench of this Court. It is next submitted that the petitioner is in custody since 23.10.2019; investigation in the case is complete; challan has been presented on 25.12.2019 and charges have also been framed on 08.09.2021 and the trial is likely to take long time and no useful purpose

would be served by keeping him behind the bars any further. Accordingly, prayer has been made for grant of regular bail to the petitioner.

6. Per contra, Learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. It is submitted that during investigation of this case, the mobile phone of co-accused (Pinki) was put on interception and she was found to be conversing with Nepal (petitioner) about murder of Jagbir by them. Learned State counsel has submitted that recording of conversation was obtained and call detail records of mobile of co-accused Pinki and mobile of petitioner, were obtained and scrutinized and it was found that both of them were continuously talking to each other, during the time of the crime and post crime also. It is further submitted that the petitioner had suffered disclosure statement admitting to have committed murder of Jagbir with the help of co-accused (Pinki). It is contended that in pursuance to said disclosure, petitioner has also got recovered a scarf (dupatta) which was used to strangle the deceased-Jagbir. It is submitted that in case the petitioner is enlarged on bail then he may influence the prosecution witnesses or may even abscond so as to delay the conclusion of trial. It is further submitted that the trial is progressing and is likely to be concluded shortly. Accordingly, prayer for dismissal of the petition was made.

7. In the instant case, the petitioner is an accused in a serious, grave and heinous offence of murder of Jagbir (son of the complainant). As per the prosecution, Jagbir is stated to have been murdered by the petitioner in conspiracy with Pinki (wife of Jagbir). Although, there is no eye witness to the alleged crime; however, prima facie, there is sufficient material/evidence to show the complicity of the petitioner in the crime in the form of call detail

records of mobile phone of petitioner and co-accused Pinki. Further it is stated that there is recording of conversation between the petitioner and co-accused Pinki, which were intercepted by the Investigating Agency; wherein the petitioner and co-accused Pinki are stated to be talking about murder of Jagbir.

7.1 Merely because the prosecution case rests on circumstantial evidence, the same cannot be the sole ground to release the petitioner on bail if during the course of investigation, sufficient evidence/material has been collected and a prima facie complete chain of events is established.

7.2 Hon'ble the Apex Court in ***Ramesh Bhavan Rathod vs Vishanbhai Heerabhai Makwana***, (2021) 6 SCC 230, observed that while deciding the application under Section 439 of the Code of Criminal Procedure, the High Court or for that matter, the Sessions Court; would not launch upon a detailed evaluation of the facts on merits since a criminal trial is still to take place. It was further observed that the outcome of the application has a significant bearing on the liberty of the accused on one hand as well as the public interest in the due enforcement of criminal justice on the other and the rights of the victims and their families are at stake as well.

7.3 Further, in ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav***, 2004 (2) RCR (Criminal) 254, Hon'ble Apex Court held that the mere fact that the accused has undergone certain period of incarceration, by itself would not entitle the accused to be enlarged on bail, nor the fact that the trial is not likely to be concluded, in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.

8. Keeping in view the aforementioned facts and circumstances, the present petition is dismissed; however, considering the fact that the petitioner has been in custody since 23.10.2019 and while dismissing the first bail application of the petitioner i.e. CRM-M-41784-2022 vide order dated 31.05.2023, a direction was already issued to the trial court to expedite the trial; therefore, I deem it appropriate to direct the trial court to conclude the trial in the present case within a period of 9 months from the next date fixed before the trial court.
9. Pending applications, if any, shall also stand disposed of.
10. Registry is directed to send a copy of this order to the trial court, for compliance.

(HARSH BUNGER)
JUDGE

28.08.2024
sjks

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