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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-12663-2023
Date of decision: 16.01.2024

Jaibir @ Jaivir ...Petitioner
Versus
State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Prathama Sethi, Advocate for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

Mr. Ravi Yadav, Advocate for the complainant.

KARAMJIT SINGH, J. (ORAL)

1. The petitioner has filed the second petition under Section 439 Cr.P.C for grant of regular bail to the petitioner in case having FIR No.168 dated 02.09.2020 under Sections 148, 149, 302, 323, 440, 459, 395, 212, 201, 325, 120-B of IPC and Section 25, 54, 59 of Arms Act, at Police Station Bhattu Kalan, District Fatehabad.
2. As per the allegations recorded in the FIR on 1.9.2020, complainant-Dinesh Kumar along with Sandeep, Anil and Jasbir was present in the office situated in liquor vend. At about 8/8:15 p.m. three vehicles stopped in front of the office and Ramesh, Leellu Ram, Mewa Singh, Sahil along with 10/12 unknown persons got down from said vehicles. Sahil was armed with pistol while the other persons were carrying iron rods and then Ramesh asked them to come out of the office and then aforesaid Ramesh,

Leelu, Mewa Singh and Sahil entered the office and then Sahil proclaimed that they are sent by Jaiveer to take revenge and then Ramesh fired from his pistol towards Sandeep and then Leelu, Mewa Singh and Sahil also started firing from their pistols. The shot fired by Ramesh hit in the stomach of Sandeep while shot fired by Leelu hit on the left arm of Sandeep while shot fired by Mewa Singh hit on the right foot of Sandeep while the shot fired by Sahil hit on the wall of office and aforesaid 10-12 unidentified persons armed with iron rods also attacked them and caused injuries on the head and other parts of the body of Anil. They also ransacked the entire office and took away amount of Rs.2.5 lacs, which was lying in the office. Later on Sandeep died when he was taken to the hospital. Injured Anil was also medico legally examined.

3. There are also allegations in the FIR that at the time of occurrence, before opening of attack co-accused Ramesh raised lalkara that they have come to take revenge of his father Kehar Singh and uncle Jaiveer (petitioner).

4. The counsel for the petitioner submits that the petitioner who has been falsely implicated in the present case is in custody for the last more than 3 years and 3 months. It is further submitted that the petitioner was not present at the time of alleged occurrence and there is nothing on the record to show that the petitioner conspired with the other accused person to kill Sandeep or to cause bodily harm to Anil. The counsel for the petitioner further submits that some of the accused who were present at the time of occurrence are granted regular bail by this Court. It is further submitted that as per custody certificate, the petitioner is involved in 9 other criminal cases

out of which he is on bail in 8 cases. The counsel for the petitioner further submits that after the arrest of co-accused Ramesh Kumar, de-novo trial has commenced but till date no prosecution witness has been examined. So prayer is made that the petitioner be released on bail.

5. The present petition is resisted by the State counsel as well as the counsel for the complainant both of whom have resisted the present petition and stated that the petitioner is the main conspirator behind the entire occurrence which resulted in death of Sandeep and one Anil Kumar was injured. It has been further contended that recovery of one car and two mobile phones was effected from the petitioner who is in custody for the last more than 3 years and 3 months. The State counsel on instructions from ASI Purshottam has not refuted the fact that the petitioner was not present at the time of occurrence. It has been further submitted that the petitioner is a habitual offender and is facing trial in 9 other criminal cases out of which he is enlarged on bail in 8 cases. The State counsel has not disputed the fact that after commencement of de-novo trial, the prosecution is unable to examine any witness on its behalf till date.

6. I have considered the submissions made by counsel for the parties.

7. There are allegations against the petitioner that he conspired with the other accused persons to cause harm to Sandeep and Anil. The allegations of conspiracy will be tested during trial. Admittedly, the petitioner is in custody for the last more than 3 years and 3 months and after the arrest of co-accused Ramesh Kumar now de-novo trial is at its initial stage and it will take considerable time for trial to conclude. During

investigation, no weapon used in commission of crime was recovered at the instance of the petitioner. From the perusal of the record, it could be easily made out that the petitioner was not present at the time of occurrence and as such no injury is attributed to the petitioner and this fact is not refuted even by the State counsel. No doubt, the petitioner is having 9 other criminal cases against him out of which he is on bail in 8 criminal cases. In the given circumstances, as it will take time for the trial to conclude, no purpose is going to be served by prolonging the judicial custody of the petitioner.

8. In the light of the above, without expressing any opinion with regard to merits of the case, the present petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing of personal/surety bonds to the satisfaction of the learned trial Court/CJM, concerned.

16.01.2024

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No