

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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2024:PHHC:045183
CRM-M-14990-2024 (O&M)
Date of decision: April 3rd, 2024

Sunil Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Nakul Sharma and Mr. Manan Khetarpal, Advocates
for the petitioner.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

MANJARI NEHRU KAUL, J.

Petitioner is seeking the concession of bail under Section 439 of the Code of Criminal Procedure, 1973 in case FIR No.9 dated 10.01.2023 under Sections 302/323/460/396/397/120-B of the IPC and Section 25 of the Arms Act registered at Police Station Thanesar City, District Kurukshetra.

2. Mr. Ravi Sodhi and Mr. Umesh Pandey, Advocates, have filed power of attorney on behalf of the complainant, which is taken on record.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner is completely innocent but has been falsely implicated in the instant case. While drawing the attention of this Court to the FIR, which has been annexed as Annexure P-1, he has pointed out a crucial omission, wherein the complainant, husband of the deceased, had failed to provide any details much less physical description of the alleged perpetrators of the crime, who had barged into their house on the fateful day, looted valuables and murdered his wife. Learned counsel has

submitted that a perusal of the FIR clearly reveals that nowhere had the complainant stated that he would be able to recognize the alleged assailants, if they were brought before him. As per the learned counsel, this glaring omission casts a serious doubt on the credibility of the purported test identification parade conducted by the investigating agency, where the complainant claimed to have identified the petitioner. It has been further asserted that the unexplained delay of six hours in lodging of the FIR after the occurrence in question further lends credence to the false implication of the petitioner. This delay underscores the possibility of a false and concocted case having been brought forth, particularly considering another assertion made by the complainant in the FIR itself that there were only two assailants, who had entered his house on the fateful day with firearms.

4. Learned counsel has lastly urged that given that both, the complainant and his mother, who too were allegedly present during the occurrence in question, have been examined before the trial Court, petitioner's further incarceration would serve no useful purpose; the petitioner has been in custody for over a year having been arrested on 10.01.2023 thus, there can be no apprehension of the petitioner intimidating or influencing any witnesses at this stage.

5. *Per contra*, the learned State counsel assisted by counsel for the complainant has vehemently opposed the prayer and submissions made by the counsel opposite. It has been asserted that after the crime in question substantial cogent evidence had been collected by the investigating agency against the petitioner and the co-accused, which left no manner of doubt qua their involvement in the murder of the deceased. It has been submitted that during the test

identification parade, the complainant identified the accused including the petitioner as being the assailants, and even the CCTV footage collected by the police from the scene of the crime clearly revealed the presence of the petitioner and his participation in the crime in question. Additionally, it has been submitted that the complainant Atul Arora, while stepping into the witness box as PW-1, identified the accused including the petitioner as being the persons, who had entered his house on the fateful day under a false pretence and committed the heinous offence. Learned counsel have also submitted that the testimony of the complainant leaves no room for doubt regarding the identity of the petitioner as one of the assailants, who actively participated in the crime in question. It has been also argued that there was no history of any strained relations between the parties, which eliminated the possibility of any false implication. Furthermore, the recovery of the stolen valuables as also the countrymade pistol (weapon of offence) at the instance of the petitioner further nailed him in the crime in question. Learned State counsel, on instructions, has also submitted that bloodstained clothes of the petitioner along with other incriminating evidence such as call detail records etc. proved his complicity along with the co-accused in the crime in question, beyond reasonable doubt. Learned State counsel, on further instructions, has also submitted that the petitioner is a man of criminal antecedents as previously also he has been involved in a criminal case under Section 307 of the IPC and Section 25 of the Arms Act registered at Police Station Kurukshetra University, Kurukshetra.

6. I have heard learned counsel for the parties and perused the relevant material on record.

7. The case in hand rests on eyewitness account. Before proceeding further, it would be relevant to reproduce the relevant portion of the FIR, which has been annexed as Annexure P-1, which is as under:-

“Today on dated 09.01.2023 As per usual time of about 9:20P.M. I came upstairs on the first floor of the house and went straight to the room of my parents. While I was exchanging words with my father, suddenly heard screams of my wife Dr.Vanita. The moment, i came out of the room, two boys put a pistol on my head and dragged me to the drawing room and forcibly made me sit there. And the boys started asking me as to where I had kept the money and jewellery. I immediately took out Rs.one lakh from my trouser's pocket. Thereafter, I did not hear the voice of my wife. That youngster boys assaulted me for about 15 minutes and repeatedly questioned me as to where is the 'Temple' of the house as also whether the jewellery is lying in the almirah just above the 'Temple'. Thereafter, they boys took me to kitchen and made me sit there. They also threatened me to immediately kill me, upon which I pleaded with them to let me meet my parents. Within a split of second, I pushed the boy out of the room and bolted the room from inside. That the assailants had disconnected the intercom and telephone wires. However, I opened the back door and jumped in the adjoining school. Thereafter, by scaling the wall of school, I came on the road, knocked the door of my neighbour residing in House No.109 and narrated to them the entire incident. Police authorities were intimated. When PCR Van reached at the site, I along with the police officials went upto the first floor of my house, searched for my wife and was shocked to find her dead in the Bakery, neither the breathing nor the pulse nor heartbeat was there. I also looked around in the house and noticed that the assailants had taken away my jewellery, my parents' jewellery as also my daughter's marriage jewellery. All the three steel almirahs and steel almirah were also found open. My mother also disclosed that the assailants had taken away her gold bangles and cash from her. That all these facts were in the knowledge of one Poonam, who had worked with us as Maid about five months ago that jewellery of madam kept in the almirah situated above the temple. I

suspected that Poonam along with her paramour Vikram and their other associates have committed this crime and after committing the horrifying crime, they also took away with them the DVR of CCTV. That Upon hearing the screams of my wife, my servant Ketram and his wife Gudiya had also rushed down to the first floor, where pistols were brandished at them. That these assailants upon entering my house at night time, stole the jewellery, took away the mobile and murdered my wife and strict actions may kindly be taken against these young assailants.”

8. Given the aforementioned facts and circumstances, coupled with the positive identification of the petitioner by the complainant during both, test identification parade and trial, his *prime facie* involvement in the crime in question is discernible. This Court is, therefore, not inclined to extend the concession of bail to the petitioner, more so since it is a matter of record that he has criminal antecedents; the instant petition stands dismissed.

9. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

April 3rd, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned

:

Yes

Whether reportable

:

No