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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Date of Decision : July 24, 2024

AJAY

-PETITIONER

V/S

STATE OF HARYANA

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Tejinder Pal Singh, Advocate
for the petitioner.

Mr. Bhupender Singh, D.A.G., Haryana.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant petition, the petitioner craves for indulgence of this Court for him being enlarged on regular bail, in case FIR No.444 dated 27.06.2022, under Sections 302, 34 of the IPC, registered at P.S. Sector 32-33, Karnal, District Karnal.

FACTUAL MATRIX

2. The genesis of the present FIR is embodied in a complaint made by one Krishan Pal (hereinafter referred to as the 'complainant'), wherein, he alleged that the petitioner and his co-accused committed murder of his son. The relevant extract of his complaint, as narrated in paragraph No.2 of the order dated 26.02.2024, wherethrough the learned Sessions Judge concerned has declined bail to the petitioner, is reproduced hereinafter:-

"2.on 27.06.2022, at about 1:00 AM, his son Aman came to his house while running and he was being chased by 4-5 boys, having dandas and bricks in their hands. He climbed up on the roof of the house in order to save himself, but 2 of those boys also went on the roof of the house, whereas two remained outside the house. While the family members were talking to the boys, who remained outside the house, they



heard noise of something falling from the roof. When they rushed to the back of their house and found Aman there, having injury on his forehead. He was immediately taken to hospital on motor-cycle and after half an hour, the doctors of Kalpana Chawla Medical College & Hospital declared him dead. They took the dead body of his son back to their house at 5:30 AM. At that time, one boy namely Rahul was also accompanying his son Aman and as per Rahul, the accused also caused beating to him as well as Aman near their house and when they released themselves from their clutches, they chased them. It was also revealed that those boys came there in Tempo and also returned in the same Tempo....”

3. Consequent upon registration of the present FIR, proceedings under Section 174 of the Cr.P.C. were conducted. The doctor, who conducted post-mortem of the deceased, opined the cause of his death as “*head injury, which was sufficient to cause death*”. Thereafter, statements of Rahul, Aarti and Sonam were recorded under Section 161 of the Cr.P.C. The role of the petitioner and his co-accused, as surfaced in the statement of Rahul, is reproduced hereinafter:-

“...at that time a green colored CNG tempo came from behind and stopped near us and 3 boys got down from it and tempo driver remained sitting in the tempo. They asked us why you are roaming here. We said that we have come from a birthday party and there are our houses and we are going to our respective houses. They started telling us that you are vagabonds and are wondering to commit theft. We had an argument with each others. The tempo driver also got down from the tempo and all four of them took out sticks from the tempo and all four of them started saying us that they will teach us the consequences of arguing with them. One of the boys caught me and another boy caught Aman. All four of them started beating both of us. After getting rid of them, I ran towards the vacant plot to escape and kept hiding near the Gurudwara and kept watching those boys. After that, Aman also got rid from them and ran towards his house. All four boys started running behind Aman. After about 20-25 minutes, I saw those four



boys, whom I knew by face, going back in the same tempo. After some time, Aman's father Krishna Pal came to our house and told about Aman falling from the roof. After that, when I went to Aman's house, I came to know that those boys who had come running after Aman at night, two boys followed him to the roof of his house and threw Aman from the roof and hit him with bricks and two boys were standing outside of the house. Thereafter I went to the government hospital Karnal to inquire about Aman, who was declared dead by the doctor. My friend Aman was murdered by the above mentioned four boys by beating him and throwing him from the roof. I knew those boys by face and when I personally enquired, their names and addresses are Ajay son of Karambir, caste Balmiki, resident of Ahmedpur police station, Pundri, District Kaithal at present H.No. 179, Gali No. 3, R.K. Puram Karnal, Naveen S/o Preetpal Caste Harijan residence Prem Kheda Police Station Nising at present H. No. 179 Gali No.3, R.K. Puram, Karnal, Kuldeep resident of street in front of Gurudwara, Balmiki Basti, Nissing District Karnal and Ankit alias Kalu son of Mahabir, resident of Ahmedpur police station, Pundri District, Kaithal...”

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

4. The learned counsel for the petitioner submits that neither the petitioner has been named in the present FIR, nor any role has been assigned therein to him, rather his involvement has surfaced only in the statement suffered by one Rahul. Nonetheless, even if the prosecution case is taken to be a gospel truth, yet the only role assigned to the petitioner is that he was standing outside the house of the deceased, whereas, it was co-accused Kuldeep, who had pushed the deceased from the terrace of his house, whereupon he had died.

5. To substantiate his submission that the petitioner was standing outside deceased's house, the learned counsel for the petitioner draws attention of this Court towards the hereinafter extracted portion of the reply dated

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22.07.2024, as placed on record today by the learned State counsel:-

“....it is submitted that co-accused Kuldeep pushed the son of the complainant from the roof of their house with the intention to kill him..... The petitioner and co-accused Naveen stood in front of the house of the deceased and the petitioner asked co-accused Kuldeep and Ankit in loud voice that do not spare that boy (deceased) and kill him.....”

6. The learned counsel for the petitioner further submits that, since arrest of the petitioner's absconding co-accused- Ankit has resulted in *de novo* commencement of the trial, which is not likely to conclude anytime soon, therefore, subjecting the petitioner to prolonged incarceration would not serve any gainful purpose, especially he is not the main accused.

7. Finally, the learned counsel for the petitioner draws attention of this Court towards the order dated 01.05.2024 (Annexure P-6), drawn upon CRM-M-10741-2024, to submit that since the petitioner's co-accused Naveen @ Naveen Kumar has already been granted the concession of regular bail, therefore, the petitioner also deserve an alike relief, inasmuch as, he is on a co-equal pedestal as his co-accused (*supra*).

SUBMISSIONS OF THE LEARNED STATE COUNSEL

8. Although the learned State counsel has opposed the grant of bail to the petitioner, on account of him becoming charged with serious offences, however, he does not dispute the fact that, consequent upon arrest of co-accused Ankit, the trial has commenced *de novo*.

REASONS FOR ALLOWING THE INSTANT PETITION

9. This Court has heard the arguments made by the learned counsels for the parties and also perused the record.

10. The case set up by the prosecution, is that, it was co-accused



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Kuldeep and Ankit, who had chased the deceased to the terrace of his house, and that, it was co-accused Kuldeep, who had pushed the deceased from the terrace, which resulted in his death. The role assigned to the petitioner is that he was standing outside the house of the deceased and he is not the main accused.

11. Considering the hereinabove made discussion, especially the fact that: (i) the issue “*whether the petitioner shared or not a common intention with his co-accused/main accused to commit murder of the deceased*” is a moot question, which requires its becoming adjudicated by the learned trial Court after appreciation of evidence, as may become adduced by the parties; (ii) undisputedly, the petitioner has been in custody since 29.06.2022, and, he is not involved in any other case; (iii) there is no likelihood of the trial concluding anytime soon, inasmuch as, *de novo* trial has commenced after arrest of the petitioner’s absconding co-accused Ankit; (iv) petitioner’s co-accused Naveen @ Naveen Kumar has already been granted bail by this Court; this Court deems it appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. The petitioner is ordered to be released on bail on furnishing of bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

12. However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

July 24, 2024
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No