

225

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-26490-2022****Date of Decision: 11.03.2024**

Rajender

...Petitioner

vs.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat**Present :** Mr. Rohit Mittal, Advocate
for the petitioner.

Mr. Karan Garg, AAG, Haryana.

N.S.Shekhawat J. (Oral)

1. The petitioner has filed the instant petition under Section 439 of the Cr.P.C. with a prayer to grant regular bail in case FIR No.06 dated 10.01.2021 registered under Sections 302, 201 of IPC, at Police Station City, Salhawas, District Jhajjar.
2. The FIR in the present case was registered on the basis of the statement made by Dharamvir Son of Tek Ram and the same has been reproduced below:-

“To SHO, P.S. Sahlawas. Sir, It is requested that I Dharamvir son of Tek Ram am Resident of Village Dhana. I am agriculturist and admit that my earlier application is correct. That on dated 09.01.2021, my elder brother namely Krishan went in the field for irrigation. I was at home and at about 8:51 P.M., I received phone call of Rajender from Mobile No. 9671531395 on my Mobile no. 9991383198. He told me that your brother is in injured condition in the field, you should reach soon. After reaching

at the spot in the field, I found that there were many injuries on his head and he was unconscious. Bani singh and his son namely Bhupinder, Residents of Dhanirwas were also present there. We got admitted our brother namely Krishan in PGI, Rohtak for treatment. My brother died during treatment on dated 10.01.2021 due to reason of injury on head. I got registered the case regarding that incident. Now, I got verified at my own level and I have full suspected that Rajender son of Rishal Singh, Resident of Dhana killed my brother by inflicting injury with spade. My brother namely Krishan had given rupees to Rajender and my brother demanded back several time from Rajender, but despite repeated demands, Rajender dilly delayed in the payment of rupees. Due to reason of demanding of borrowed money back, Rajender killed my brother. Strict legal action should be taken against Rajender after arresting him Sd/-(Eng.Dharambir), Applicant.”

3. Learned counsel for the petitioner contends that the petitioner has not been named in the FIR nor any averment in the FIR connects him with the commission of crime in any manner. He further contends that after one and a half month i.e. on 23.02.2021, an application (Annexure P-2) was moved by the complainant against the present petitioner and on the basis of the said application, the petitioner was nominated as an accused in the present case. As per learned counsel, it was a case of circumstantial evidence and the circumstances are yet to be established by the prosecution during the course of trial. He further contends that in the present case, it has been alleged that there was a financial dispute between the parties, however, no evidence has been produced by the prosecution to prove the same and the petitioner had no motive to commit the alleged crime. Learned counsel further contends that in the present case, the petitioner was ordered to be arrested on 24.02.2021 and is in

custody for the last more than 3 years and is the first offender. Learned counsel further contends that five private witnesses, out of 31 witnesses, have been examined so far and there are no chances of tampering with prosecution evidence. To show his bonafides, learned counsel for the petitioner has voluntarily offered that till the conclusion of the prosecution evidence, the petitioner shall not enter village Dhana, Police Station Salhawas District Jhajjar. Learned counsel for the petitioner has further relied upon the judgments passed by the Hon'ble Supreme Court in the matter of **“Ranjan Dwivedi Vs. CBI, through the Director General, 2012(8) SCC 495; 2012 (4) RCR (Criminal) 880”** and **“Gudikanti Narasimhulu and others v. Public Prosecutor”, AIR 1978 SC 429.**

4. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner is the main accused and had committed the crime due to a pending monetary dispute between both the parties. He further contends that during the course of investigation, sufficient incriminating evidence had been collected against the present petitioner and even the complainant has supported the case of the prosecution before the trial Court.

5. I have heard the learned counsel for the parties and perused the record.

6. In the present case, the petitioner was not initially named as an accused in the present case and later on, on an application dated 23.02.2021 (Annexure P-2), the petitioner was nominated as an accused in the present case. It is a case based on circumstantial evidence and the prosecution is yet to lead evidence to prove the circumstances against the present petitioner, which would

eventually prove the alleged crime against him. However, it is an admitted fact that the petitioner is in custody for the last more than 3 years and is the first offender. No doubt, the allegations levelled by the complainant in the present FIR indicate the seriousness of the offence and specific allegations have been levelled against the present petitioner, however, the petitioner cannot be detained in custody as under trial for an indefinite period. In fact, any detention for a longer period, without completion of trial by the trial Court, is violative of Article 21 of the Constitution of India.

7. In view of the above discussion, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate, concerned, subject to the following conditions:-

- (i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.
- (ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.
- (iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.
- (iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.
- (v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.
- (vi) In case, the petitioner involves in any other criminal activity, during the pendency of the trial, it shall be viewed seriously.
- (vii) The concerned Court may insist on two heavy local sureties and may also impose any other condition, in accordance with law, while accepting the bails bonds and surety bonds of the petitioner.

- (viii) The petitioner shall report every 1st Monday in English calander month before the concerned SHO till the conclusion of the trial and SHO shall mark his presence by making an entry in the rojnamcha. In case, he does not report on every 1st Monday before the concerned SHO, it shall be viewed seriously and the concession granted to him shall be liable to be cancelled and the State of Haryana shall be at liberty to move an appropriate application in this regard.
- (ix) The petitioner shall also file an affidavit before the concerned Court that he shall not enter village Dhana, Police Station Salhawas District Jhajjar, till the conclusion of the prosecution evidence.

11.03.2024
hemlata

(N.S.SHEKHAWAT)
JUDGE

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