

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.36279 of 2021 (O&M)

Date of decision: 24th April, 2024

Rajpal @ Pali

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. H.P.S. Ishar, Advocate for the petitioner.

Mr. Rajesh Gaur, Addl. Advocate General, Haryana
for the respondent/State.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is seeking the concession of bail under Section 439 Cr.P.C. in case FIR No.78 dated 20.04.2020 under Sections 120-B, 34, 302 of the IPC registered at Police Station Bahu Akbarpur, District Rohtak.

2. Learned counsel for the petitioner inter alia submits that the petitioner has been in custody since 22.04.2020 and there is no likelihood of the trial concluding in the near future as an application under Section 319 Cr.P.C. was moved by the prosecution which has since been allowed as recently as in March, 2024 and co-accused Bittu has been summoned as an additional accused to face trial. Learned counsel submits that however, said co-accused Bittu has not surrendered before the trial Court; he is still at large after his prayer for anticipatory bail was declined by the trial Court. He submits that in the

circumstances, the petitioner cannot be made to languish in custody as now a de-novo trial would commence. It has also been submitted by the learned counsel for the petitioner that not only did the complainant while stepping into the witness box make material improvements with respect to the weapon of offence, but glaring contradictory versions came to the fore qua the place of occurrence, inasmuch as in the FIR it had been alleged that the occurrence had taken place on the road, however, in the challan, the version put forth was that the deceased, in a drunken condition had raised lalkara as a result of which a quarrel ensued between the parties which led to the occurrence in question.

3. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, on instructions from ASI Udham Singh, has not been able to dispute that co-accused Bittu has indeed been summoned under Section 319 Cr.P.C. to face trial as an additional accused. It has also not been disputed on instructions that after the anticipatory bail application of co-accused Bittu was declined, he has not surrendered till date. However, learned State counsel has invited the attention of this Court to the allegations levelled in the FIR in question, which has been annexed as Annexure P-1. He has submitted that a perusal of the same reveals that it is an eye-witness account; the petitioner was specifically named along with accused Bittu (who has now been summoned under Section 319 Cr.P.C.). As per the allegations levelled, the assault upon the deceased, carried by the petitioner and the co-accused was witnessed by the complainant, who is none other than the brother of Devinder (hereinafter referred to as, 'the

deceased'), as well as their father, who then rushed to the spot on being informed about the assault by the petitioner and the co-accused; on reaching the spot, the complainant as well as his father witnessed the entire occurrence as well as saw the deceased succumbing to the injuries inflicted on various parts of the body by the petitioner and co-accused. Learned State counsel, on further instructions, has though not disputed the submissions made by the counsel opposite that in the FIR in question, it had been alleged that the petitioner and the co-accused were armed with wooden sticks (bitta), but, while stepping into the witness box, the complainant had deposed that the petitioner was armed with a spade (kassi). Learned State counsel has however, submitted that it cannot be said to such a discrepancy so as to create any dent in the case of the prosecution and further it was an eyewitness account; it was on account of the injuries inflicted by the petitioner and the co-accused that the deceased met his end. He, on further instructions has informed the Court that the next date of hearing fixed before the trial Court is 02.06.2024 when the evidence of the material witnesses is likely to be recorded after the commencement of de-novo trial.

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

5. A perusal of the FIR in question makes it abundantly clear that it is a case of eye-witness account; the petitioner has been specifically named in the FIR in question and also attributed fatal injuries on the person of the deceased. No doubt, as also not disputed by the learned State counsel, there is some contradiction with respect to

the weapon of offence used in the crime in question as in the FIR it has been alleged that wooden sticks had been used, however, during his deposition the complainant had instead alleged that a spade had been used to commit the murder of the deceased. Be that as it may, the improvements, if any, would be a matter to be appreciated during trial and at this stage, more so, when as already observed earlier it is an eye-witness account, this Court cannot delve into appreciation of evidence. Undoubtedly, the petitioner has been in custody for a period of 4 years, however, at the same time this Court cannot remain oblivious to the fact that an application under Section 319 Cr.P.C. was moved, which was allowed and now co-accused Bittu has been summoned to face trial. In the circumstances, this Court would not be inclined to extend the concession of bail to the petitioner. The petition stands dismissed.

6. 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.

7. In view of the long incarceration of the petitioner, the trial Court is directed to make earnest efforts to conclude the trial at the earliest, preferably within the next 6 months.

(MANJARI NEHRU KAUL)
JUDGE

April 24, 2024
rps

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