

2024-PHHC-128074



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-32087-2024
Date of decision: 26.09.2024

SATISH ALIAS KALA
Versus
STATE OF HARYANA
...Petitioner
...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. R.S.Hooda, Advocate
for the petitioner.

Mr. Bhupender Singh, DAG, Haryana.

KULDEEP TIWARI. J.(Oral)

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.717 dated 11.11.2015, under Sections 302, 201, 216, 120-B of IPC, and Sections 25/29 of the Arms Act, registered at Police Station Sector-5, Gurugram, District Gurugram.

ALLEGATIONS AGAINST THE PETITIONER

2. The prosecution agency was set into motion on a statement made by one Ashok Kataria, son of Hari Singh Kataria, resident of Gurugram, wherein, he has stated that he has a HP Petrol Pump by the name Mata Sheetla Fuel Station on Palam Vihar Road, Gurgaon near Ganda Nala. On 10.11.2015, at around 10:35 PM, the complainant along with his brother Manoj, were present at the Petrol Pump, one black colour Scorpio No.HR-26-LN-0074 came to the petrol pump, and Raju alias Raj Kumar, son of Bhim Sain R/o Mehfil Garden, Gurgaon alongwith two other boys namely Vikas and Rahul Arora, stepped out of the said

car, after coming out of the car, we heard gun shot noise, and saw that Raju was running, and 3-4 boys who were having weapons were running behind Raju, and they fired bullets shots on Raju, on which Raju fell down on the road. After that said 3-4 boys ran away from the spot after leaving one motorcycle Apache White Colour, bearing a Temporary Number HR-99-WT-0465. Raju was taken to Colombia Hospital, by his friends and later Raju succumbed to death due to the gun shot injuries. When the above-said 3-4 boys were firing shots at Raju, one of the bullet had hit the front left tyre of our Ford Endeavour Car bearing No.HR-26-BQ-0999. We know Raju since before, and he came to give us Diwali Gift, and it feels that he has been murdered by his enemies due to some old enmity.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

3. The learned counsel for the petitioner, in his asking for the hereinabove extracted relief, has made the following submissions:-

- (i) The other 05 co-accused who have earlier faced trial in the instant matter, were acquitted from the charges framed against them, vide judgment of acquittal dated 20.03.2018.
- (ii) One of the basic reasons for recording the verdict of acquittal (*supra*) was that all the three eye-witnesses turned hostile and did not support the prosecution version;
- (iii) The petitioner has undergone sufficient incarceration i.e. 07 years, 04 months and 04 day as on today;
- (iv) The allegation against the present petitioner in the instant case is that he is one of the person who opened a gunshot injury which hit the deceased, however, mere recovery of one countrymade pistol and two live cartridges do not connect the present petitioner with the instant crime, as there is no FSL report to co-relate the same.

(v) All the star witnesses, who have been examined by the prosecution in the trial of the instant case, have turned hostile, therefore, no purpose would be served to keep the present petitioner behind the bars, and more than seven years have lapsed, but the trial has yet not concluded.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. *Per contra*, the learned State counsel, vociferously opposed the grant of regular bail to the petitioner, and submits that the petitioner is one of the main accused who alleged to have caused gunshot injury to the deceased.

5. He further submits that the present petitioner is facing trial in two more cases, and has been convicted in seven other criminal cases, which includes the offence under Section 302 IPC also.

6. He also submits that the custody period in the instant FIR is yet to begin as the petitioner is undergoing sentence in other criminal cases registered against him.

7. He has placed on record a custody certificate *qua* the petitioner, which reflects that the petitioner has suffered incarceration of 07 years 04 months and 04 days, as on today.

8. He over and above, on instructions imparted to him by the police official concerned, informs this Court that in the instant case, till today out of the total 49 witnesses cited by the prosecution, 38 witness have been examined.

CONTENTS OF REPLY

9. On the directions issued by this Court, reply to the instant petition was filed, by way of affidavit dated 28.08.2024, of Sh. Jitender, HPS, Assistant Commissioner of Police, Old Gurugram, Gururam, has been filed on behalf of respondent State. The same is taken on record. A perusal of the reply reveals that

after the acquittal of other co-accused, a further investigation was carried out and petitioner-Satish @ Kala, and one Imran, whose complicity in the crime had come on record, on the disclosure statement made by the earlier arrested accused-Binder Gujar and were declared as proclaimed offenders. Final report against them as per the provisions of Section 299 Cr.P.C., was put in the Court of competent jurisdiction on 13.11.2016.

10. Thereupon on 18.05.2017, the present petitioner-Satish @ Kala, Arvind @ Pandit, Surender @ Fauji, and Naresh Kumar, were arrested upon receipt of appropriate incriminating evidence against them. The co-accused Surender @ Fauji got recovered the Swift VDI car which was taken into possession. The present petitioner-Satish @ Kala in pursuance of the disclosure statement got recovered a countrymade pistol, alongwith two live cartridges, which were used by him in the commission of the crime. Accused Arvind @ Baba got recovered a Santro vehicle bearing no.HR14C-9217, which was taken into possession.

FINAL ORDER

11. Be that as it may be, this Court has considered the rival submissions made by learned counsel for the parties, and is of the considered opinion that the instant petition is amenable for being allowed.

12. The reason for forming the above inference emanates from the factum that:- (i) the petitioner is facing trial in the instant FIR since 2017, and till date trial has not concluded; (ii) out of the total 49 prosecution witnesses, 38 witnesses have been examined till date; (iii) the star witnesses of the prosecution have turned hostile; (iv) whether, the recovery effected from present petitioner would connect him with the instant crime, is a moot question which is to be decided by the learned trial court concerned, at an appropriate stage of the trial; (v) other co-

accused in the instant FIR who faced the trial, have already been acquitted vide judgement (*supra*); (vi) the petitioner is behind the bars in the instant case since 18.05.2017, and further incarceration of the petitioner is not warranted.

13. Considering the hereinabove made discussion, this Court deems it fit and 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.

14. However, it is clarified that if in future, the petitioner is found indulging in commission of similar offences, as are involved herein, the respondent-State shall be at liberty to make an appropriate application seeking cancellation of regular bail, as granted by this Court. Moreover, anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petition only.

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

16. All pending application(s), if any, also stand **disposed** of accordingly.

26.09.2024
dharamvir

(KULDEEP TIWARI)
JUDGE

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