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

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CRM-M-33373 of 2024 (O&M)
Date of Decision:28.11.2024

Gaurav

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Ms. Shweta Bawa, Advocate, and
Mr. Pardeep Balyan, Advocate,
for the petitioner.

Mr. Abhinash Jain, 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.124 dated 03.04.2023, under Section 302, 34 of IPC, & under Section 25 of the Arms Act (Sections 109, 120-B and 202 IPC, added later on), registered at P.S. Bahalgarh, District Sonipat.
2. The instant FIR has been registered on a statement made by one Sumit, wherein, he alleged that two unidentified persons have killed his brother Amit by way of gun-shot injuries. The relevant extract of the FIR is being as under:-

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“I am a resident of village Kumaspur and I do a private job and we are 3 brothers. My youngest brother Amit alias Chiku s/o Rajpal r/o village Kumaspur, whose age was about 32 years. My brother Amit used to be a truck driver. Today my brother Amit left home on foot to go to duty. When my brother Amit reached near the liquor store of village Kishora, then two unknown boys came from the village side, on a motorcycle and fired several pistol bullets upon my brother Amit who was walking on foot and then the boys ran away towards Bahalgarh. My brother Amit died on the spot due to gun shot fired upon him. My brother Amit was shot dead by two unknown boys.”

3. On the basis of the above complaint, the present FIR was registered. The post-mortem of the deceased Amit was got conducted, where the doctor opined that cause of death is hemorrhagic and shock consequent to multiple firearm injuries to the vital organs. Thereafter, on dated 05.04.2023 i.e. after two days of the occurrence, complainant made a supplementary statement, alleging therein, that he has satisfied himself with Aman son of Rajbir, and furthermore, Gaurav (present petitioner) had already talked to Rahul and Rohit, that Aman and Gaurav have instigated both Rohit @ Shera, and Rahul @ Bholu to commit murder of his brother Amit, and thereafter, committing the said murder, they took his brother's phone, which may also be got recovered. During investigation, the police also collected CCTV footage, wherein, co-accused Aman is seen at the place of incident. On dated 06.04.2023, Aman was arrested, and during his police remand, he suffered a disclosure statement to the effect that his uncle Gaurav (present petitioner),

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was already informed about the murder of Amit @ Chiku. On the basis of the said statement of the co-accused, Section 202 IPC, was added, for knowing the fact that the murder of the deceased would take place. Thereupon, the present petitioner was arrested on dated 07.04.2024. During his police remand, the present petitioner suffered a disclosure statement to the effect that he instigated both Rohit and Rahul, to kill Amit @ Chiku, as to take revenge of the murder of his brother. On the basis of the said disclosure statement, as suffered by the present petitioner, the prosecution agency proceeded to invoke Section 109 IPC, in the present case. Further, during investigation, the Call Detail Record (CDR), was also collected by the investigating agency, in order to establish that the present petitioner, was actively in touch with the co-accused Rohit.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

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

(i) That there is no legal admissible evidence with the prosecution to connect the present petitioner with the instant crime. Initially the case of prosecution as reflects from the disclosure statement of co-accused Aman that the petitioner was only aware about the intent of co-accused Rohit and Rahul, regarding the commission of murder, and for that the prosecution agency proceed to invoke Section 202 IPC, and after the arrest of the present petitioner, on the very next day, the prosecution agency has improved their story and recorded the disclosure statement of the present petitioner to the



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effect that he, in fact, is the one abettor and Section 109 IPC was invoked.

(ii) She further submits that the disclosure statements of co-accused as well as the present petitioner, is directly hit by the provisions Section 27 of the Indian Evidence Act, and the same are not admissible.

(iii) The petitioner has faced incarceration of about 1 year, 8 months as on today, and has clean antecedents.

(iv) She also submits that that the conclusion of the trial would take long time, as the trial has not even reached to the half mark.

(v) She in addition submits that one of the main eye witness who stepped into the witness box as PW3-Sahil, did not support the case of prosecution, and he was subsequently declared hostile. Though the complainant Sumit, while stepping into the witness box as PW1, supported the case of prosecution, but in his cross-examination, he categorically admitted that he had not seen the present occurrence. Therefore, there is no evidence with the prosecution to connect the present petitioner with the instant crime.

(vi) She over and above submits that there is no allegation whatsoever, that the petitioner is one of the accused who caused injury to the deceased, in fact such allegations are only against accused Rahul and Rohit.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

5. Learned State counsel, vehemently opposed the grant of regular bail to the present petitioner and has made the following submissions:-



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(i) He submits that the motive is only attached with the present petitioner, as his brother Sourav was murdered, and he in order to take revenge, instigated both the co-accused, Rahul and Rohit to commit the murder of Amit.

(ii) He further submits that this fact reflects from the CDR, as collected by the prosecution agency, that the petitioner was constant in touch with the main accused Rahul and Rohit.

(iii) After having instructions from the quarter concerned, he informed this Court that out of total 28 cited prosecution witnesses, only nine have already been examined and next date before the learned trial Court is 18.12.2024.

6. This Court has considered the submissions made by learned counsel appearing on behalf of the parties concerned and perused the entire record.

7. It is not under dispute that the case of prosecution, as levelled against the present petitioner, is of a abettor. Whether, there is a sufficient evidence to substantiate the allegations of abetment against the present petitioner, would be moot question, to be adjudicated by the learned trial Court concerned, at an appropriate stage. The submissions regarding insufficiency of evidence made by learned counsel for the petitioner, would be decided by the learned trial Court concerned and this Court refrain itself to make any observation in this regard. However, considering the days of incarceration i.e. 1 year, 7 months and 22 days as on today, and the stage of the trial i.e. it is yet to reach to the half way mark, and the fact that the petitioner has clean antecedents, this Court deems it appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting



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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.

8. Pending application(s), if any, also stand(s) disposed of.

(KULDEEP TIWARI)
JUDGE

November 28, 2024
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No