

2024:PHHC:141765



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM M-33495 of 2024
Date of Decision: 28.10.2024

Sandeep @ Koki		...Petitioner
	Versus	
State of Haryana		... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Pankaj Kaushik, Advocate
for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

Mr. Rahul Singh, Advocate, for the complainant.

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 a regular bail in case FIR No.74 dated 21.02.2022 registered under Section 302 and Sections 25 and 29 of the Arms Act at Police Station Madhuban, District Karnal.
2. The FIR in the present case was registered on the basis of the statement made by Virender @ Bunty, brother of the deceased and the same is reproduced below:-

“To, SHO, Police Station Madhuban, District Karnal, The request is that I am Virendra alias Bunty, son of Vinod Kumar, caste Goswami, resident of village Uncha Samata, District Karnal. We are two brothers and a sister. My younger brother Sumit was 23 years old and used to work at a goldsmith's shop. A few days ago my younger brother Sumit told me at home that he had a fight with Arjun son of Rampal, Sandeep alias Koki son of Virampal resident of village Uncha Samana and Ravindra alias Tinni alias Tarun son of Rajveer caste Jat resident of Nuskhedhi. All three of them have sworn to kill my brother Sumit. Yesterday on 20.02.2022 at around 09.00 PM my brother Sumit received a call after which he ran out of the house and today morning I got the news that his body was found in the field near Rampal's Tube well. When I inquired on my own, I found that the caller was Arjun son of Rampal, who had called my brother using the number 80571-16169 of Israr, a laborer living in Gadaria's Chowpal in the village. Sandeep alias Koki and Ravindra alias Tinni alias Tarun were also with him. My brother Sumit was killed by Arjun, Sandeep alias Koki, Ravindra alias Tinni alias Tarun. I have identified the body of my brother Sumit, who has injuries on his head and on the left side of the stomach. Action should be taken against these three. SD VIRENDER Mobile No. 9050307058 Date 21.02.22”.

3. Learned counsel for the petitioner contends that the petitioner was involved in the present case only on the basis of the suspicion and even till the conclusion of the investigation, the police

could not find any incriminating evidence against the petitioner. He further contends that the petitioner was arrested in the present case on 24.02.2022 and is in custody for the last more than 02 years and 08 months. He further contends that even the police has wrongly relied upon a CCTV footage, which was obtained from certain villagers and the CCTV footage was clearly manipulated. Even, as per the case set up by the prosecution, the petitioner had inflicted blows with legs and hands on Sumit, since deceased. However, the medical record clearly belies the prosecution case and the corresponding injuries are clearly missing in the postmortem report. Even, as per the case of the prosecution, Anurag had fired shots from country made pistol and Ravindra @ Tinni @ Tarun had caused injuries with a danda. Thus, his case is clearly distinguishable from his co-accused Anurag and Ravindra @ Tinni @ Tarun, who had caused injuries to Sumit, since deceased. Learned counsel further contends that during the course of trial, statements of PW1 Israr and PW2 Virender, complainant have been recorded. Even, PW1 Israr stated in his cross-examination that the police had never asked him to identify the accused during investigation and he did not know the accused. Similarly, PW2, complainant also stated that he had not witnessed the occurrence and he had not moved any written complaint to the police regarding the threat call and he had named the accused on the basis of a CCTV footage. Further, the petitioner does not have any criminal record and

was never involved in any other case. Still further, the two material witnesses have been examined and there are no chances of tampering with the prosecution evidence.

4. On the other hand, learned State counsel assisted by learned counsel for the complainant have vehemently argued that the petitioner had conspired with his co-accused and there was sufficient incriminating evidence to show that the accused had killed due to some previous enmity. The petitioner had taken away Sumit, since deceased, on his motorcycle and which is clearly visible in a CCTV footage. Thus, the petitioner was seen in the company of Sumit, since deceased, as well as his co-accused, just before the murder of Sumit. Still further, the petitioner had given fists and kicks to Sumit, whereas Ravindra @ Tanni @ Tarun had given blows with danda on the head of Sumit. Meanwhile, Anurag took out the country made pistol and fired upon Sumit, due to which, Sumit fell down on the ground. Even, Anurag got recovered a country made pistol of 3.15 bore and a motorcycle from an abandoned factory. Thus, the petition deserves to be dismissed by this Court.

5. I have heard the rival submission made by learned counsel for the parties and perused the record.

6. In the present case, it has been alleged against the petitioner that he had taken away the deceased on his motorcycle and

this was visible in a CCTV footage. Still further, the petitioner had given blows with fists and kicks on the person of Sumit, since deceased. Thus, serious allegations have been levelled against the petitioner in the present case. However, this Court is also conscious of the facts that the petitioner was arrested in the present case on 24.02.2022 and is in custody for the last more than 02 years and 08 months. Consequently, the petitioner cannot be incarcerated for a very long period as an under-trial prisoner. Two material witnesses have already been examined by the prosecution. Still further, the prosecution has not been able to place on record any material to indicate that the petitioner is in a position to tamper with the prosecution evidence or there are chances of fleeing from the process of justice. Even otherwise, the injuries on the person of Sumit are primarily attributed to co-accused Anurag and Ravindra @ Tanni @ Tarun.

7. In view of the above, without commenting any further on the merits, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned.

28.10.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No