

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

207

CRM-M-35978-2023 (O&M)

Date of decision: 22.02.2024

Amit

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ram Pal Verma, Advocate,
for the petitioner.

Mr. G.S. Dhillon, AAG, Haryana.

Sandeep Moudgil, J. (oral)

This is a petition seeking regular bail in FIR No.268, dated 30.08.2019, under Sections 302, 34 of Indian Penal Code, 1860, registered at Police Station, Asauda, District Jhajjar.

Learned counsel for the petitioner contends that the petitioner was not named in the FIR initially and subsequently, on the basis of circumstantial evidence, he has been nominated as an accused in this case. There is no incriminating or any direct evidence connecting the petitioner with the commissioning of murder of the deceased Ram Kuwar, whose brother has actually deposed that present petitioner, Amit, used to be in the company of Dinesh. On perusal of the FIR, nothing offending against the petitioner has been noticed, as is evident from the narration of the same, which reads as under:-

“To, SHO Sahib, Police Station Asauda. Sir, it is prayed that I, Harish son of Ram Kawar, am a resident of village Asauda

Todran. We are three brothers. My brother has already expired and my elder brother Sanjay is married. On dated 29.08.2019, my father Ram Kavar had gone to sleep after eating meal in front room of the house. On dated 30.08.2019 in the morning, about 6.00 A.M., I went to serve tea to my father, then my father was moaning on cot. Who was taken for treatment in PGIMS, Rohtak by me and my brother Sanjay by using a private vehicle. Where my father declared dead by the doctors. At the time when I was taken to my father in Rohtak, then my father told me that Rasil son of Maman, Om Parkash son of Maman, Dinesh son of Krishan, Naveen son of Om Parkash, residents of Asauda have given me injuries together. Naveen has given injuries through Daa (sickle) and Rasil has given blow screw-driver in my eye and Dinesh and Om Parkash also given injuries through Dandas, which were holding in their hands. The above four namely Rasil, Dinesh, Om Parkash and Naveen has murdered my father after given injuries. The legal action may be taken against above. SD Harish son of Ram Kavar, resident of village Asauda Todran, No.9992650746.”

Learned State counsel, on the other hand, after having submitted the custody certificate, seeks dismissal of the instant petition by arguing that the petitioner has actively participated in committing the murder of Ram Kuwar, who has also suffered extra judicial confession regarding his involvement in the crime. He further states that two material witnesses, namely Manjit and Anand are yet to be examined and there is every probability of pressurizing or winning over the said witnesses. Hence, this petition may be dismissed.

Be that as it may, having gone through the custody certificate, the petitioner has suffered incarceration of 04 years, 05 months and 18 days, though he is involved in another criminal case bearing FIR No.10 of 2017,

under Sections 324, 341, 34 IPC, registered at Police Station Sadar, Bahadurgarh, District Jhajjar. In that FIR, the petitioner stands acquitted and in the instant case, learned counsel for the State could not put forth any incriminating material connecting the present petitioner to the instant offence, who has reasonably suffered custody of 04 years, 05 months and 18 days. In the light of another aspect that out of 18 prosecution witnesses, only 08 have been examined so far since the framing of charges on 13.01.2020, detaining the petitioner in custody would not serve any purpose. The trial is moving at snail's pace and will take considerable time to conclude. In such eventuality, the petitioner cannot be detained behind the bars for an indefinite period. This Court is sanguine of the fact that according to the proposition settled by the Apex Court that keeping somebody behind the bars, till his guilt is proved, for an indefinite period amounts to infringement of his right to life and liberty, as enshrined under Article 21 of Constitution of India and is against the principle "bail is rule and jail is an exception".

In light of the above, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the Trial Court/Duty Magistrate, concerned.

The present petition is, hereby, allowed.

(SANDEEP MOUDGIL)
JUDGE

22.02.2024

Ajay Prasher

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No