

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-37131-2023

Virender alias Basti

....Petitioner

Vs.

State of Haryana

....Respondent

Reserved On.: 01.02.2024

Pronounced On: 06.02.2024

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. Kapil Dev, Advocate
for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.

The petitioner prays for his release on regular bail by way of this petition filed under Section 439 Cr.P.C in a case arising out of FIR No.466 dated 23.10.2015 under Sections 120-B, 201, 212, 302, 307, 341 of the IPC & Section 25 of Arms Act registered at Police Station Murthal, Sonapat.

2. Status report by way of an affidavit dated 31.1.2024 of Shri Gorakh Pal, HPS, Assistant Commissioner of Police, Ganaur, Sonipat has been filed on behalf of respondent- State.

3. As per State version, a telephonic information was received on 23.10.2015 at Police Station Murthal from police control room that a teacher had been shot dead by gunshot injuries in Village Kumaspur. Police reached the spot, where Pardeep cousin of deceased Niranjana was found near the dead body. Said Pardeep got his statement recorded to the effect that his other cousin Arun son of Nar Singh had been earlier murdered on 24.02.2015 by Sunil @

CRM-M-37131-2023

Tillu, Umesh @ Kala along with others and that Niranjana (deceased of this case) was a witness in that Arun murder case. Some of the accused had been arrested in Arun murder case but Sunil @ Tillu and Umesh @ Kala were evading the arrest and they were pressurizing the complainant party for compromise. Their request had been turned out. Pardeep disclosed further that on 23.10.2015, he along with Niranjana were going to the house of sister of Niranjana in a car being driven by Niranjana. At about 08:20 a.m., as they reached at some distance from a bank in Village Kumasapur, a Swift car came from opposite direction and stopped in front of car of Niranjana. Accused **Sunil @ Tillu, Umesh @ Kala and two other persons** alighted from the car. Complainant tried to have conversation with them but the accused took out the pistols and fired towards Niranjana. Umesh @ Kala also fired gunshot towards him (complainant) with an intent to kill but he managed to rescue and fled from the spot. While running, he saw that Sunil @ Tillu along with his companions had dragged Niranjana out of his car and had fired gunshots towards him indiscriminately and while extending threats, they had fled away.

4.1 FIR was registered. Spot of crime was inspected. Physical evidence was collected. On 23.11.2015, supplementary statement was made by complainant Pardeep suspecting the role of **Vinay son of Devender, Rajesh son of Devi Singh, and Sunil Maan son of Surat Singh** to be involved in the murder of Niranjana, due to previous enmity with the family. He also told that **Anil** was providing shelter to his brother Sunil @ Tillu. Anil was arrested on 23.11.2015. Later on, Vinay @ Bittu son of Devender, and Rajesh were arrested on 06.01.2016 and as per the disclosure statement suffered by them,

CRM-M-37131-2023

they along with Sunil @ Tillu, Vikki, Kala @ Virender (petitioner) and Chandan had hatched conspiracy on the asking of Sunil Maan, lodged in the jail, so as to kill Niranjana. Vinay @ Bittu also disclosed that he had informed about the location of deceased Niranjana on the date of crime. It was further disclosed that Sunil @ Tillu, Virender @ Kala (petitioner), Chandan, Rajesh son of Devi Singh and Vikki had gone to the spot, and that Sunil @ Tilu, petitioner (Virender @ Kala) and Chandan had fired shots at deceased Niranjana.

4.2 Umesh @ Kala as named in the FIR was found innocent during the investigation. On 14.01.2016, Sunil Maan was arrested in this case and Section 120-B of the IPC was added. On 15.03.2016, Chandan @ Pintu was arrested and on interrogation, he suffered disclosure statement on the same lines as that of Rajesh son of Devi and disclosed about the involvement of petitioner also in committing of the murder of Niranjana.

4.3 Sunil @ Tillu, Vikas @Vikki and petitioner Virender @ Kala could not be arrested despite all possible efforts and they were declared proclaimed offender on 12.04.2016 & on 02.07.2016 respectively. Initially, challan was filed against five arrested accused. Later on, Vikas @ Vicky and Sunil @ Tillu were arrested on 21.07.2016. Challan was filed against them. Charges were framed. Trial commenced. On an application under Section 319 Cr.P.C., Umesh @ Kala was summoned by the Court vide order dated 04.08.2018 and after procuring his presence, charges were framed against as many as 08 accused, who were tried by the Court.

4.4 Vide judgment dated 31.08.2020, Sunil @ Tillu, Umesh @ Kala,

CRM-M-37131-2023

Rajesh and Chandan were convicted, whereas rest of the accused were acquitted.

4.5 Further prosecution case is that on 03.04.2021, petitioner was arrested in another case. He was joined in the investigation in the present case on 26.07.2021 and arrested. On interrogation, he suffered disclosure statement and admitted the crime. He further disclosed that he had destroyed the pistol used in the crime. After concluding the investigation, supplementary challan *qua* him was filed on 22.10.2021. Charges were framed on 22.02.2022. As per the status report, out of 30 witnesses cited by the prosecution, 15 have already been examined and the next date of hearing is 08.02.2024.

5. It is contended by learned counsel for the petitioner that petitioner has been falsely implicated simply on the basis of disclosure statement of co-accused, inasmuch as he is not named in the FIR by the complainant or by any other witness. Learned counsel further contends that four of the co-accused have already been acquitted; that no recovery of any incriminating material was effected from him; and that disclosure statement suffered by the co-accused is inadmissible. Apart from this, learned counsel for the petitioner has placed on record certified copy of statements of 11 prosecution witnesses made during trial, including eye-witness and author of the FIR i.e., Pardeep, who has not supported the prosecution case *qua* the petitioner. Learned counsel further contends that petitioner is in custody for the last more than 02 years and 06 months and that in all these circumstances he be allowed bail, as trial is likely to take long time to conclude.

6. Learned State counsel has strongly opposed the bail petition by

CRM-M-37131-2023

pointing out role of the petitioner, as emerged during investigation to be one of the assailants, who was present at the spot and had fired gunshots at the deceased Niranjana. Further attention is drawn towards the fact that petitioner remained absconding for long time and was arrested after more than 05 years. Attention is also drawn towards the criminal antecedents of the petitioner, who is involved in numerous cases and has even been convicted in a case. Learned State counsel also submits that all the witnesses are yet to be examined and that in case petitioner is allowed bail, he may threaten the witnesses. Prayer is made for rejecting the bail.

7. I have considered submissions of both the sides and have perused the record.

8. Concededly, it is only Sunil @ Tillu, and Umesh @ Kala, who are specifically named in the FIR to be the assailants along with their two accomplices. Name of those accomplices is not mentioned in the FIR. It is own case of the prosecution that name of the petitioner has surfaced in the disclosure statement of co-accused Vinay @ Bittu son of Devender; and Rajesh son of Devi Singh, who were suspected to have the role in the murder of Niranjana, in the supplementary statement of complainant Pardeep made on 23.11.2015. Later on, another co-accused Chandan @ Pintu also suffered disclosure statement, disclosing the involvement of petitioner in committing the murder of Niranjana. Apart from these disclosure statement of the co-accused, it is the own disclosure statement of the petitioner made after his arrest. However, as per that disclosure statement, he had destroyed the weapon used in the crime and thus, nothing has been recovered from him.

CRM-M-37131-2023

9. It is further the conceded case of both the sides that as of now, only petitioner is facing trial in the supplementary challan, inasmuch as 08 co-accused have already faced trial, out of whom 04 have been convicted and other 04 have been acquitted. In the trial qua petitioner, prosecution has already examined 15 witnesses, who include Pardeep, the author of the FIR and the only eye-witness of the occurrence. He has been examined as PW-9 during trial on 28.03.2023 and in his testimony, though he proved the occurrence but clearly stated that accused present in the Court (*referring to the petitioner*) never fired upon his brother i.e. Niranjan. After being declared hostile at the request of the prosecution, PW Pardeep clearly stated that accused present in the Court i.e. petitioner had never been seen by him to be amongst the assailants, who had fired upon his brother with an intention to kill.

10. With the aforesaid testimony of PW Pardeep, prosecution is left with the disclosure statements of the petitioner and that of the co-accused but admittedly, no recovery was effected from him.

11. As far as criminal antecedents of the petitioner are concerned, in the case of “*Maulana Mohd. Amir Rashadi Vs. State of U.P. & Another*” **2012(1) RCR (Criminal) 586**, similar objection was raised before Hon’ble Supreme Court. It was held as under: -

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

12. Similarly in the case of “*Prabhakar Tewari Vs. State of UP and Another*” **2020(1) RCR (Criminal) 831**, Hon’ble Supreme Court has observed as under: -

“The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail. The High Court has exercised its discretion in granting bail to the accused Vikram Singh upon considering relevant materials. No ex-facie error in the order has been shown by the appellant which would establish exercise of such discretion to be improper. We accordingly sustain the order of the High Court granting bail.”

13. It is, thus, clear that the allegation of grave and serious offence or the pendency of several other criminal cases against the accused petitioner, cannot be the basis to refuse bail.

14. Having regard to all the aforesaid facts and circumstances and the long incarceration of petitioner in custody and the fact that trial may take long time to conclude, as petitioner is in custody for the last 02 years 06 months and 04 days, but without commenting anything further on the merits of the case, the present petition is allowed. Petitioner is admitted to bail on his furnishing bail bonds/surety bonds to the satisfaction of the Learned Trial Court/Duty Magistrate concerned, on usual terms and conditions.

(DEEPAK GUPTA)
JUDGE

February 06, 2024

Neetika Tuteja

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No