

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

CRM-M-39279-2023
Reserved on: 03.04.2024
Pronounced on: 05.04.2024
2024:PHHC: 046695

ASHOK KUMAR @ SHOKI

. . . . Petitioner

Vs.

STATE OF HARYANA

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Bikram Chaudhary, Advocate, for the petitioner.

Mr. Sumit Jain, Addl. A.G., Haryana.

DEEPAK GUPTA, J.

By way of this petition filed under Section 439 CrPC, petitioner prays for his release on regular bail in case FIR No.244 dated 31.05.2019 under Sections 302/148/149/341 & 120B IPC and Sections 25 of Arms Act (Act N: 54 of 1959), registered as Police Station Kaithal City, District Kaithal.

2. Status report by way of an affidavit of Umed Singh, HPS, Deputy Superintendent of Police, Kaithal, on behalf of the respondent-State has been received.

3.1 FIR was registered on the statement of complainant Ram Kumar, (*father of deceased Sunil*), as per which on 31.05.2019 at about 12:00 Noon, he received information that five unknown persons, who had come on two motorcycles, one of which bore Registration No.HR-08-N-9227, had assaulted his son Sunil with sharp edged weapons, danda and *sua* (bodkin) near *Gyarah Rudri Mandir*, Kaithal. On receipt of this information, complainant went to the

spot and shifted his son to the Government Hospital, Kaithal, where he was declared brought dead.

3.2 During investigation, statement of Gurdev Singh, the brother-in-law (*Jija*) of the deceased and also that of the petitioner, under Section 161 CrPC was recorded, who disclosed about the involvement of the petitioner in the offence. Petitioner was arrested on 02.06.2019. On interrogation, he suffered disclosure statement admitting his involvement in the crime. He also disclosed the names of other assailants, who along with him had assaulted Sunil, resulting in his death. In pursuance of the disclosure statement of the petitioner, a blood stained Binda, blood stained orange shirt and a button actuated knife were also recovered. Other co-accused were arrested from time to time.

3.3 The postmortem examination of the deceased revealed as many as four incised wounds on his skull. The sua (bodkin) was found embedded in right scapular region. All the injuries were ante mortem in nature and cause of death was the injuries as described in the PMR. Doctor opined that injuries were possible with the knife as recovered from the petitioner. During investigation, police also collected call detail records and the location of the mobile phones of all the accused including that of the petitioner and it was revealed that their location was at the scene of occurrence at the relevant time.

3.4 After completion of investigation, final report under Section 173 CrPC was filed against all the accused except one 'P', who was a juvenile. Report against the juvenile offender was submitted in the Juvenile Justice Board. Police report also reveals that after out of 36 witnesses, cited by the prosecution, 23 have already been examined including complainant Ram Kumar, who has supported the prosecution case.

4.1 It is contended by ld. counsel that petitioner has been falsely implicated; that petitioner is not named in the FIR; that trial Court had earlier granted the concession of regular bail to the petitioner, but on the petition filed by the complainant, that regular bail was cancelled by this Court vide order dated 09.11.2020 passed in CRM-M-22805-2020. That order was challenged by the petitioner before Hon'ble Supreme Court, but the SLP was dismissed on 15.12.2020 with liberty to the petitioner to apply for bail after evidence of the complainant.

4.2 Ld. counsel contends further that allegations against the petitioner are concocted just to implicate him. Ld. counsel further submits that PW1 Ram Kumar is not the eye witness; whereas testimony of PW5 Gurdev Singh is not reliable and even otherwise, he has not attributed any role to the petitioner.

4.3 Ld. counsel also contends that co-accused Vicky @ Sultan, Sandeep @ Sunny and Gurmail @ Teli have already been granted bail by this Court from time to time vide orders Annexures P7 to P9, respectively. Ld. counsel also pointed out that petitioner is in custody for the last more than 4 year and 5 months and so, in all these circumstances, he be granted bail.

5.1 Ld. State counsel has strongly opposed the petition by pointing out that petitioner is the main accused, who along with his friend and other co-accused murdered his own brother. Specific role of the petitioner has been found in the crime. At his instance, a blood actuated knife and Binda were recovered. Ld. State counsel has also drawn attention towards the order of this Court, whereby the bail earlier granted to the petitioner was cancelled, in which this Court had observed that recovery of knife had been attributed to the petitioner and there were corresponding injuries with the weapon, which were

fatal in nature, received by deceased on his head, which fact could not be considered as insignificant.

5.2 Ld. State counsel also contends that earlier petitioner had hurled threats to the complainant of the case due to which, complainant had moved an application for cancellation of the bail. Ld. State counsel also submits that petitioner cannot claim parity with the other co-accused, who have been allowed bail by this Court from time to time. Prayer is made for rejecting the bail petition.

6. I have considered submissions of both the sides.

7. Petitioner is the real brother of the deceased. As emerged during investigation, it is the petitioner, who along with his friend hired the other co-accused and all of them with different kinds of weapons including Binda, sharp edged weapon and sua (bodkin) assaulted Sunil, resulting in his death. Knife and Binda have been recovered at the instance of petitioner. PW5 Gurdev Singh is the brother-in-law (Jija) of the deceased as well as the petitioner, who in his testimony (Annexure P5) has clearly indentified the petitioner to be one of the assailants. As per the doctor's opinion, injuries No.1 to 4, found on the person of the deceased, were caused by sharp edged weapon.

8. As far as the co-accused, who have been allowed bail, it is revealed that Vicky @ Sultan was allowed bail on 10.03.2022 (Annexure P7) in CRM-M-46930-2021, as it was noticed that he was not present at the spot where the deceased was killed; that there was no weapon or injury attributed to him and that the only role attributed to him was of hatching a conspiracy. Other co-accused Sandeep @ Sunny was allowed bail vide order dated 24.03.2022 (Annexure P8) in CRM-M-11305-2022, after noticing that only fist

and leg blows on the deceased had been attributed to him. Another co-accused Gurmail @ Teli was allowed bail vide order dated 07.07.2023 (Annexure P9) passed in CRM-M-29866-2023, after noticing the testimony of PW5 Gurdev Singh, the eyewitness of the occurrence, in which he had identified only Ashok Kumar @ Shoki (petitioner herein) and had not specifically identified the co-accused Gurmail @ Teli. In these circumstances, case of the petitioner cannot be considered to be on parity with the other co-accused, who had been granted bail.

9. Now doubt that the petitioner is in custody for the last 4 years 5 months and 9 days as per the custody certificate, but the role attributed to him in the crime; and the gravity of the offence, which entail punishment even upto death, cannot be ignored.

10. Having regard to all the facts and circumstances as discussed above, but without commenting anything further on merits of the case, this Court is not inclined to grant regular bail to the petitioner. As such, the present petition is hereby dismissed.

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

05.04.2024

Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?
Whether reportable?

Yes
No