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

CRM-M-50041-2023 (O&M)

Date of decision : 16.04.2024

Joginder Khatana

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Vinod Ghai, Senior Advocate,
with Mr. Arnav Ghai, Mr. Tanvir S. Grewal
& Shivam Sharma, Advocates for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

Mr. Gautam Dutt, Advocate for the complainant.

MAHABIR SINGH SINDHU, J.

Present second petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of bail pending trial to the petitioner in FIR No.216 dated 01.09.2022, under Sections 109, 302, 120-B, 201 of the Indian Penal Code, 1860; and Section 25 (1-B) (a) of the Arms Act, 1959, registered at Police Station Civil Lines, District Gurugram.

2. Above FIR was registered on the statement of Anurag S/o Sukhbir with the following allegations:-

“We are three brothers and one sister. My father Sh. Sukhbir Singh is a political person, who had been the Vice-President of Market Committee, Sohna. He was presently active in politics in Halqa Sohna, Gurugram. Today, my father Sh. Sukhbir Singh along with his chacha's son - Rajender, Patwari had gone

to the Raymond Showroom at Gurudwara Road, Gurugram for buying clothes. At around 3:30 PM, Rajender informed me that 4-5 persons have fired bullets on my father, inside the showroom; and He was being taken to Arvy Hospital. On receiving this information I reached Arvy Hospital, where I have seen that several bullets have been fired upon my father at his head and chest, due to which he has died. By this time, several other family members have also reached at the hospital. My father had solemnized two marriages. My father was not having good relations with my younger mother's brother - Chaman; some tension was going on between them, for last several days. I have full belief that Chaman along with his accomplices has killed my father by firing bullets upon him. That strictest action may be taken against Chaman and his other accomplices.

3. Learned Senior Counsel contends that alleged occurrence had taken place on 01.09.2022, but petitioner was not named in the FIR; nor his name was mentioned by the eye-witness-Rajinder Singh while recording his statement on 01.09.2022 under Section 161 Cr.P.C. Further contends that petitioner has been nominated as an accused only on the basis of third disclosure made by co-accused-Chaman @ Pawan on 28.09.2022 and since then, he is in custody.

Again contended that as per disclosure made by co-accused-Chaman @ Pawan, petitioner had paid Rs.20,00,000/- (Rupees Twenty Lakhs) to him in the year 2020 before Corona and Rs.5,00,000/- (Rupees Five Lakhs) prior to second wave of Corona in the year 2021 for buying arms as well as arranging shooters. Apart that, it is alleged that Rs.2,00,000/- (Rupees Two Lakhs) were given to him in the year 2022 for buying new Careta Car for committing the crime. Again contended that two prosecution witness namely Sanjay

@ Babloo and Jitender @ Jitte PWs-1 & 2 respectively, have not supported the prosecution case. Also contended that initially charges were framed on 22.08.2023 and thereafter on 26.10.2023, but out of total 77 prosecution witnesses, only 09 have been examined so far; thus, trial will take sufficient long time.

Lastly contended that there is no other criminal case pending against the petitioner; hence, his further incarceration would not serve any purpose.

4. *Per contra*, learned State counsel opposed the prayer while submitting that from CCTV footage obtained from Chaayos Café, it is clearly visible that petitioner had a meeting with main accused eight days before the alleged occurrence on 23.08.2022; thus, his complicity is apparent in the commission of crime. He further submitted that during investigation, Sanjay @ Babloo got recorded his statement under Section 161 Cr.P.C on 23.11.2022 to the effect that petitioner used to call Chaman @ Pawan quite often and apart that, Jitender @ Jitte in his statement dated 02.10.2022 under Section 161 Cr.P.C stated that money was received by Chaman @ Pawan from the petitioner; thus, he is the master mind of the case being the main conspirator. Also submitted that in case petitioner is released on bail, he may hamper the trial.

5. Learned counsel for the complainant also vehemently opposed the prayer while submitting that it is the petitioner who had arranged the money for the hired killers in the present case; hence, he does not deserve the concession of bail.

6. Heard both sides and perused the paper-book.

7. Concededly, petitioner was not named in the FIR; nor by the eye-witness-Rajender Singh while recording his statement under Section 161 Cr.P.C. It is quite discernable that in the first and second disclosure dated 23.09.2022 & 24.09.2022, co-accused-Chaman @ Pawan did not utter even a word regarding the complicity of petitioner; rather, in the third disclosure made on 28.09.2022, he has nominated the petitioner. Although, prosecution is alleging payment of Rs.27,00,000/- (Rupees Twenty-Seven Lakhs) by the petitioner to co-accused-Chaman @ Pawan, but there is no material to substantiate the same; hence, it cannot be accepted as a gospel truth.

Although, Sanjay @ Babloo in his statement under Section 161 Cr.P.C stated that he used to call Chaman and asked him to meet Joginder, but while appearing as PW-1, he has not supported the prosecution case. Also noteworthy that this witness during his cross-examination, even denied that petitioner was visiting his tea stall or that he used his mobile phone for making call to Chaman @ Pawan. He has also denied the suggestion that he used to pass on messages that Chaman should meet the petitioner at Chaayos Café.

Apart that, Jitender @ Jitte while appearing as PW-2 has also not supported the prosecution case; rather, he has denied the suggestion during cross-examination that Chaman @ Pawan had given him Rs.6,00,000/- (Rupees Six Lakhs) in the year 2020. Also worthwhile to mention here that during investigation, police recovered mobile phone of petitioner, but there is no call details available

connecting him with any of the co-accused; nor any incriminating data is retrieved in this regard.

Since Chaman @ Pawan has made four contradictory disclosure statements; and except his third disclosure, there is no other material available with the prosecution regarding the complicity of petitioner as on today.

8. Although, learned State counsel expressed apprehension that in case petitioner is released on bail, he may hamper the trial, but the same is not acceptable for the reasons that petitioner is having a clean record and apart from the present FIR, there is no other criminal case pending against him.

9. As the trial will take sufficient long time; therefore, in view of the facts and circumstances discussed herein-above, further incarceration of the petitioner would not serve any purpose.

10. Consequently, present petition is **allowed**; petitioner shall be admitted to bail on furnishing bail/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

11. Petitioner shall appear on each & every date of hearing and to fully co-operate with the learned trial Court without seeking any unnecessary adjournment(s).

12. The above observations may not be construed as an expression of opinion on the merits of the case.

13. It is clarified that in case there is recurrence or any misuse of concession of bail on the part of the petitioner, State of Haryana

would be at liberty to move an appropriate application for recalling of this order.

14. Pending application(s), if any, shall also stand disposed off.

16.04.2024
atulsethi/v

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No