

Nawaj Sharif... Petitioner

Versus

State of Haryana.. Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr.Salman Ahmed, Advocate
for the petitioner.

Mr.Sharad Aggarwal, DAG, Haryana.

Mr.Imtiyaz Hussain, Advocate
for the complainant.

SUVIR SEHGAL, J. (ORAL)

1. This is the third petition filed under Section 439 Cr.P.C. seeking grant of post-arrest bail in:-

FIR No.	Dated	Police Station	Sections
261	29.03.2019	Nuh	302, 201, 34, 216, 120-B IPC and 25 of Arms Act, 1959.

2. Case of the prosecution is that FIR, Annexure P1 has been

registered on the statement of Jamshed stating that his younger brother Abbas Khan left his home in the evening on 27.03.2019 and did not return. Repeated calls on his mobile went unanswered. On inquiry, he came to know from Aasif that his younger brother was taken in a car by Mijja, Nawaz Sharif, present petitioner, and Asru. His mobile phone was found on the road by one Sheru. On 29.03.2019, Aasif informed the complainant that the dead body of his younger brother has been found in an agricultural field. He had injuries on his body and blood was oozing from his mouth and nose. Alleging that Mijja, Asru and Nawaz Sharif have committed the murder and thrown the body in the field, Jamshed submitted a complaint, which resulted in the registration of the FIR.

3. By referring to the testimony of Aasif – PW3, which has been appended as Annexure R2 with the affidavit filed by the State, counsel for the petitioner submits that he has not supported the case of the prosecution and has deposed that he had never seen any of the three accused. Counsel submits that the entire case of the prosecution is based on ‘last seen together’ but in the light of the testimony of this vital prosecution witness, the same collapses. He submits that the earlier two petitions preferred by the petitioner were declined by this Court vide orders, Annexure P3, (collectively) as the material witnesses had not been examined. Counsel submits that as the star prosecution witnesses have been examined and the petitioner, who is in confinement since 17.08.2019, he deserves to be enlarged on bail.

4. Custody certificate dated 05.01.2024 has been filed by the State

counsel, which is taken on record. By making a reference to the affidavit filed by the official respondent, State counsel has opposed the petition. He is supported by counsel for the complainant, who submits that as Aasif was arrested in a criminal case, lodged in the same cell as the petitioner, he was intimidated and he deposed in favour of the petitioner. He submits that an application filed under Section 311 Cr.P.C. for recalling of Aasif has been declined by the trial Court and the complainant is in the process of challenging that order. State counsel submits that the petitioner had a motive to commit homicide as the deceased was aware of the nefarious activities of the petitioner. He submits that recovery of 28 ATM cards, the vehicle used in the crime and the identity cards of the deceased have been effected from the petitioner. It has been asserted that complainant has been examined and he has supported the prosecution case.

5. I have heard counsel for the parties and considered their respective submissions.

6. Petitioner is in detention for the last more than 52 months. Four out of thirty eight prosecution witnesses have been examined and there is a remote possibility of an early conclusion of the trial. Both the vital prosecution witnesses have deposed. The role allegedly ascribed to the petitioner would remain a subject matter of debate before the trial Court and would be determined on the basis of documentary and ocular evidence produced by the prosecution. It does not require any examination by this Court for the purpose of adjudication of the present petition.

7. In view of the above, without advertng to the merits or demerits

of the arguments addressed by counsel for the parties, petition is allowed. Petitioner is ordered to be released on bail on furnishing adequate bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate, concerned.

8. It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

08.01.2024
Brij

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No