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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-53531-2023 (O/M)

Date of decision : 13.03.2024

Anil Kumar

..... Petitioner

Versus

State of U.T. Chandigarh

..... Respondent

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. G.B.S. Gill, Advocate
for the petitioner.

Mr. Manish Bansal, P.P. (UT) with
Mr. Navjit Singh, Advocate with
ASI Jasbir Singh, U.T.
for respondent.

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HARSH BUNGER, J. (ORAL)

Petitioner (Anil Kumar) has filed the present petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case bearing FIR No. 0181 dated 14.11.2021 (Annexure P-1), under Sections 302, 34 of the Indian Penal Code, registered at Police Station South Sector 34, Chandigarh.

2. Status report by way of affidavit of Shri Dalbir Singh, CPS, Deputy Superintendent of Police, SDPO/South Sub Division Chandigarh, has been filed by U.T. Chandigarh, which is already on record.

3. Succinctly, the aforesaid FIR has been registered on the statement of one Anil Kumar son of Devi Parsad, who stated that he has

three children (two elder girls and a younger son Nikhil). About one year ago, his son Nikhil purchased a motorcycle from a known person and about three months ago, his son sold the said motorcycle to one Abhey alias Abhi son of Anil Kumar (petitioner herein) for Rs. 8,000/-, who in turn gave Rs. 6,000/- and kept Rs. 2,000/- saying that the balance will be paid when the motorcycle is transferred to his name. It was stated that Abhey alias Abhi started harassing his son Nikhil and he alongwith his father Anil Kumar (petitioner herein) also fought with his son Nikhil 2/3 times and threatened him of the serious consequences if the motorcycle is not transferred to their name. On the day of occurrence, at about 7.30 pm, while the complainant was standing outside his house and his son Nikhil was standing nearby then said Abhey alias Abhi and his father Anil Kumar (petitioner herein) came there and surrounded his son Nikhil and said that they will see him for not transferring motorcycle to their name. While the complainant was watching, Anil Kumar (petitioner herein) said to his son Abhay alias Abhi that do not let him (Nikhil-deceased) go and he should be taught a lesson, whereupon Abhay alias Abhi in aggression started scuffling with complainant's son Nikhil and during this scuffle, he attacked Nikhil on his left armpit with some sharp weapon upon which Nikhil fell on the ground. It was further stated that the complainant reached running to his son and with the help of people present there, took him to GMCH, Sector 32, Chandigarh for treatment where the doctor declared his son Nikhil dead.

4. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case at the instance of complainant, only to rope him, being father of Abhay alias Abhi

(co-accused). It is submitted that prior to this incident, no complaint has ever been filed against petitioner or his son regarding harassment meted out to the son of complainant. It is submitted that no overt act has been attributed to the petitioner and nothing has been recovered from him.

5. Learned counsel submits that the petitioner had applied for grant of regular bail before the Court of Additional Sessions Judge, Chandigarh, which was wrongly declined vide order dated 26.07.2023 (Annexure P-2). Learned counsel submits that the petitioner has been in custody in this case since 15.11.2021; investigation in the case is complete, challan stands presented on 08.02.2022 and even charges have been framed on 22.03.2022. It is further submitted that there are total 26 witnesses cited in this case, out of which only 10 prosecution witnesses have been examined by now including the complainant. Hence, conclusion of trial will take some time and no useful purpose would be served with further incarceration of the petitioner. It is submitted that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail is made.

6. Per contra, learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. It is submitted that though nothing has been recovered from the petitioner, but the co-accused (Abhey alias Abhi) led to the recovery of disputed motorcycle and the sharp edged weapon which was used at the time of incident. It is further submitted that as per PMR, the deceased received 5 injuries and injury No. 4 has been declared as grievous in nature and the cause of death is haemorrhage and shock consequent upon injury No. 4 which is sufficient to cause death in ordinary nature. It is next

submitted by learned State counsel that the petitioner has actively participated in the crime as he exhorted his son (co-accused Abhey alias Abhi). It is further submitted that the petitioner does not have clean antecedents as petitioner is involved in another case FIR No. 532 dated 28.12.2002 under Sections 325/34 IPC registered at P.S. Sector 34, Chandigarh, which fact has been concealed in this petition. It is also submitted that in case petitioner is granted concession of regular bail then there is every likelihood that petitioner would abscond and flee from trial and he may intimidate/influence the other PWs. It is therefore submitted that the bail application filed by petitioner has been rightly dismissed by the learned Additional Sessions Judge, Chandigarh. Accordingly, it is prayed that petitioner ought not be extended the concession of regular bail.

7. I have heard learned counsel for the parties and perused the paper book as well as status report of the petitioner.

8. In the instant case, the petitioner has been specifically named in FIR and specific role has also been attributed to him. Although, the petitioner was arrested on 15.11.2021 and even charges have been framed in this case, however, in my considered opinion, merely long incarceration cannot be a ground to extend the concession of bail to the petitioner, who is co-accused in the crime and is being tried for a heinous and grave offence of murder of Nikhil. In *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav*, 2004(2) RCR (Criminal) 254, Hon'ble Apex Court held as under:

“The condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already

undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitled the accused to be enlarged on bail, nor the fact that the trial is not likely to be concluded, in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.”

9. In the present case, a precious human life has been lost in the occurrence; trial is proceeding and some witnesses already stand examined. The petitioner, who is co-accused, if enlarged on bail then there is a possibility that he might abscond or indulge in influencing the witnesses. Therefore, the apprehension expressed by State counsel that in case petitioner is granted concession of regular bail then he may abscond and flee from trial or intimidate witnesses cannot be brushed aside likely. Hence, keeping in view the gravity and nature of the offence, I do not deem it fit to extend the concession of regular bail to the petitioner. Accordingly, the present petition is dismissed. However, trial Court shall make an endeavour to expedite the trial.

10. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

11. All pending application(s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

13.03.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No