

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

239

CRM-M-56737-2023

Date of decision: 15.01.2024

Pawan Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. S.K. Jindal, Advocate
for the petitioner.

Mr. Rahul Mohan, Sr. DAG, Haryana.

Mr. P.S. Ahluwalia, Advocate
for the complainant.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner in the instant (third) petition is seeking the concession of bail under Section 439 of the Cr.P.C. in case FIR No.592 dated 23.11.2021 under Sections 302, 307, 120-B, 34 of the IPC and Section 25 of the Arms Act, 1959 registered at Police Station City, Jind (Sections 201, 212 of the IPC and Section 27 of the Arms Act, 1959 were added lateron).

2. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the instant case which stands fortified from the fact that neither was he named by the complainant at the time of registration of the FIR in question which has been annexed as Annexure P-4 nor any suspicion raised qua his involvement in the crime, though suspicion had been raised by the complainant against co-accused Dharmender Pehalwan and 3/4 other persons. It has been

submitted that as per the allegations levelled in the FIR, the deceased had been shot at by masked assailants who had come on the foot while he was outside his house/office. Lateron, the petitioner was falsely arrayed as an accused on the basis of a disclosure statement allegedly suffered by the co-accused and he was assigned a role of being one of the two hired assassins. It has been argued by the learned counsel that there was no material collected by the investigating agency which could in any manner link the petitioner with the alleged crime as it was a matter of record that on the fateful day and at the time of the alleged occurrence the petitioner was on duty in bus No.HR57A-7462 of the Haryana Roadways Bus. It has still further been submitted that the petitioner was identified by the complainant and the other eye witness PW1 Advocate Vinod Bansal for the first time during trial which would not hold any value as it was the admitted case of the prosecution that the assailants had come to the place of occurrence with muffled faces. Therefore, in the circumstances, it was strange as to how the two eye witnesses including the complainant could have identified the petitioner as being the one who had fired the fatal shots on the person of the deceased. It has still further been submitted that the petitioner had no motive whatsoever to commit the murder of deceased Sham Sunder and it did not appeal to prudence as to why the petitioner being a Government Employee and having clean antecedents would commit the crime in question without any rhyme and reason. It has been further submitted that co-accused Jugti Ram, who even after being named in the FIR had been extended the concession of bail and hence, it has been urged that the case of the petitioner is on a much better footing since he

has now been in custody for almost two years having been arrested on 27.01.2022 and the prosecution evidence has still not concluded, thus, he cannot be made to languish in custody awaiting the conclusion of the trial.

3. Per contra, learned State counsel assisted by learned counsel for the complainant while opposing the prayer and submissions made by the counsel opposite, on instructions from SI Ranbir, has submitted that after the registration of the FIR in question, during investigation enough material including the documentary evidence in the shape of CCTV footage of the place of occurrence was collected by the police; the petitioner along with two other persons was clearly visible therein along with firearms which were used to gun down the deceased and inflict injuries on the complainant. It has been further submitted that though the petitioner was wearing a mask, however, his broad facial features were clearly visible in the CCTV footage coupled with the fact that the occurrence lasted about 4-5 minutes; hence, the complainant as well as eye witness PW1 Advocate Vinod Bansal, a stamped witness who had fully supported the case of the prosecution while stepping into the witness box, had ample opportunity to register the broad facial features of the assailants. Controverting the submissions made by learned counsel for the petitioner that he could not have possibly been present at the place of occurrence, it has been submitted by the learned State counsel that no doubt the petitioner was on duty on the fateful day, however, it was also a matter of record that the relevant entry in the register at the gate of the Haryana Roadways Depot pertaining to bus No.HR57A-7462 was only of the conductor of

the bus. Furthermore, on 23.11.2021, the petitioner was supposed to go to Sirsa at 08:00 A.M., however, he instead stationed the aforementioned bus in the Haryana Roadways Workshop at Hisar at 11:00 A.M. by reporting that the bus had developed some fault; the bus was never taken out from the Haryana Roadways Workshop by the petitioner and it was thus evident that it was a well planned crime executed by all the accused. It has been still further submitted that not only this, even the weapon of the offence used in the crime was returned to co-accused Roshan by the petitioner, after the occurrence in question; the report of the FSL pertaining to the empties recovered, and the weapon of offence used in the crime in question matched with each other. A prayer has, therefore, been made for dismissal of the instant petition as it was a cold blooded murder carried out through hired assassins i.e. the petitioner and the co-accused.

4. I have heard learned counsel for the parties and perused the material placed on record.

5. As per instructions received by the learned State counsel, the complainant as well as the son of the deceased who is a stamped witness while stepping into the witness box had not only fully corroborated the case of the prosecution but had also identified the accused petitioner during trial. The assailants came on foot and after committing the crime, fled away on foot as well. The plea of alibi is a matter of trial and cannot be a ground to extend the concession of bail particularly in a case of this kind which is based on eye witness account. In the facts and circumstances as enumerated hereinabove, this Court does not deem it fit to extend the concession of bail to the

petitioner.

6. Accordingly, the instant petition is hereby dismissed.

7. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

15.01.2024
Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No