

CRM-M-60385-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-60385-2023

Date of decision : 09.01.2024

Ashok @ Shonka

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

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

Mr. Ashok Kumar Sehrawat, DAG, Haryana.

PANKAJ JAIN, J. (ORAL)

1. Prayer in the petition is under Section 439 Cr.P.C. for grant of regular bail in case FIR No.185 dated 18.05.2016 registered under Sections 302, 120-B, 34 of IPC and 25-54-59 of Arms Act at Police Station Kharkhoda, District Sonipat.

2. As per the allegations levelled in the FIR, it has been alleged as under:-

“That I am Sarikant S/O Surendra Jat, a resident of village Halalpur. We were two brothers, the elder was Sujit and the younger was me. Today on 17.5.2016, in the morning at our house Happy with my brother Sujit, alias Hitesh son of Harbir Jat village Bajitpur Delhi or there were two more boys with him whose names I don't know, who had come to meet me, my brother Sujit had told me that Happy and his two friends are my friends, then they met my brother Sujit. After talking, they left our house and today around 5 o'clock in the morning, two boys with unknown

names had come to our house with Happy to meet my brother, the same two boys had come riding on a black Pulsar motorcycle I who was sitting in the car in front of my house, was standing at the side of our house in gali. I don't know the names of those two boys, stopped the motor cycle near my brother and started talking to him and they talked to my brother in the street for about 20 minutes and then in my sight behind the motorcycle the sitting boy started firing from his pistol and I heard the sound of 4 and 5 shots being fired. Then my brother fell on the ground after being shot in the street. Two guys riding a motorcycle, whose names are unknown, ran away from the motorcycle along with their weapons. Then I took my brother Sujit in my car and took Saroj for treatment. Brought to the saroj hospital in Delhi where Dr. Saheb saw my brother Sujit and declared him dead. I don't know the name of two boys, harboring some unknown grudge in their hearts, shot my brother dead. Legal action will be taken against them, SD should be done Mr. Kant Applicant Mr. Kant son Surendra Kom Jat village Halalpur 8397806399 Proceeding police today I SI HC Pradeep No. 651, EHC Satpal No. 1259, CT Dharambir No. 1648/SPT Investigation No. 553/15 U/S 302/120 B/34 IPS 25-54-59 A. ACT PS was present in village Sohti in Kharkhoda and received information from the control room Sonipat that two motorcyclists have shot a person in village Halalpur. You reached the spot on after reaching the incident spot village Halalpur, it was found that two motorcyclists had shot Sujit, son of Surendra community Jat resident of Halalpur, who had taken Sujit to Saroj Hospital. Delhi. on the information of which the incident took place. For the safety of the place. leaving EHC Satpal 1259 at the spot, Man SI along with his fellow employees reached Saroj Hospital, Rohini, Delhi, where an MLR NO 2341/16 dated 17.5.16 BROUGHT DEAD Sujit was obtained, which was

kept in the emergency ward of Saroj Hospital, Delhi. Mr. Kant, brother of the deceased, son of Surendra Jat community resident of Halalpur met Sujit and presented a written application to the SI, who presented the application under the head of crime 302/34 IPC 25-54-59 A. ACT.

3. Custody certificate has been placed on record, which shows that petitioner has remained undertrial for more than seven years one month and twenty nine days. Apart from facing trial in the present case, the petitioner has also earned conviction under Sections 308 IPC read with 149 IPC, 411 IPC read with 149 IPC, 225 IPC read with 149 IPC, 186 IPC read with 149 IPC, 332 IPC read with 149 IPC, 353 IPC read with 149 IPC, 224 IPC read with 149 IPC in FIR No.275 dated 30.09.2016 in which he was sentenced to six years and have served sentence including remission for six years, three months and twenty two days. Apart therefrom, petitioner faced trial in four more cases wherein he has earned acquittal. The tabulated chart reads as under:-

a.

(i)	FIR No/Date/U/s/PS	FIR No.489/2015 dated 09.11.2015, U/s 392 IPC, 25-54-59 A. ACT PS: SAFFIDON, JIND
(ii)	Name of the Ld. Court of (with date of acquittal):	Ld. Court of Sh. Ajay Kumar (SDJM-SAFIDON) acquitted by order No. dated 02.04.2022 which is received on 02.04.2022
(iii)	Remained confined as undertrial (if any) 12.04.2017 to 02.04.2022	04 Years, 11 Months & 21 days

b.

(i)	FIR No/Date/U/s/PS	FIR No.119/2016 dated 05.04.2016, U/s 379 B IPC, PS: MATLAUDA, PANIPAT
(ii)	Name of the Ld. Court of (with date of acquittal):	Ld. Court of DR. J.R. CHAUHAN (DJ-PANIPAT) acquitted by order no dated 18.12.2017 which is received on 18.12.2017
(iii)	Remained confined as undertrial (if any) 12.04.2017 to 18.12.2017	00 Years, 08 Months & 07 Days

c.

(i)	<i>FIR No/Date/U/s/PS</i>	<i>FIR No. 303/2016 dated N/A, U/s 302 IPC, 202 IPC, 120-B of IPC, 34 of IPC, PS;City Gohana, Sonipat</i>
(ii)	<i>Name of the Ld. Court of (with date of acquittal):</i>	<i>Ld. Court of DR. RAJINDER PAL GOYAL (ADJ-SONIPAT) acquitted by order no dated 24.08.2023 which is received on 24.08.2023.</i>
(iii)	<i>Remained confined as undertrial (if any) 02.11.2016 to 08.12.2022 09.12.2022 to 24.08.2023</i>	<i>06 Years, 09 Months & 23 Days</i>

d.

(i)	<i>FIR No/Date/U/s/PS</i>	<i>FIR No.218/2018 dated N/A, U/s 379-B IPC, 452 IPC, 25 A. ACT, PS: MODEL TOWN PANIPAT, PANIPAT</i>
(ii)	<i>Name of the Ld. Court of (with date of acquittal):</i>	<i>Ld. Court of MS. SEEMA SINGHAL (ASJ-PANIPAT) acquitted by order no dated 15.02.2023 which is received on 15.02.2023.</i>
(iii)	<i>Remained confined as undertrial (if any) 27.03.2017 to 19.01.2021 09.12.2022 to 15.02.2023</i>	<i>04 Years, 00 Months & 00 Days</i>

4. Learned counsel for the petitioner submits that the FIR was lodged against unknown persons and the petitioner was thereafter nominated during investigation on the basis of the disclosure statement made by Hitesh @ Happy who is claimed to be the mastermind behind the present matter. Hitesh @ Happy has been granted bail by this Court Vide order dated 21.12.2022 passed in CRM-M-52277-2022 observing as under:-

“*This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.185 dated 18th of May, 2016 registered for the offences punishable under Sections 302, 34 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959 (subsequently added Section 120-B IPC), at Police Station Kharkhoda, District Sonipat.*

2. Ld. Counsel for the petitioner submits that the

petitioner is in custody since 10th of August, 2016. He refers to order dated 20th of March, 2020 to contend that the prosecution evidence stood concluded and the matter was adjourned for recording the statement of the accused for 4th of April, 2020. However, thereafter an application under Section 311 of the Code was moved by the prosecution and despite having taken two years seven months the matter is still being adjourned for prosecution witnesses. He, thus, submits that delay caused by the prosecution is costing the petitioner as he is being denied right to expeditious trial. On merits he submits that bare perusal of the FIR would reveal that petitioner was admittedly not even present on the day the occurrence took place. An occurrence of 17th of May, 2016 has been alleged in the FIR only to implicate the petitioner even though admittedly on the fateful day he was not present. He submits that the petitioner has been implicated merely on the basis of disclosure statement suffered by the accused who has been attributed the gun-shot injury which itself would not be admissible in evidence to drive-home guilt of the petitioner.

3. Ld. State Counsel appearing for the State has emphatically opposed the prayer made by the petitioner. He submits that during investigation motive behind the occurrence has been attributed only to the petitioner and from the sequence of the occurrence, it is evident that it is the petitioner only who was the master-mind. Apart from that State Counsel submits that the conduct of the petitioner would itself be enough to decline any concession of bail to him as he is facing more than 10 cases involving serious offences. Chart thereof has been tabulated in Para 9 of the reply filed on behalf of the prosecution, which reads as under:

"(i) FIR No.308 dated 25.07.2016, under Sections

25/54/59 Arms Act. Police Station Bawana, Delhi, in which he stands acquitted 30.04.2019.

(ii) FIR No. 107 of 2011, under Section 25 Arms Act, Police Station Bawana, Delhi, which is still pending trial.

(iii) FIR No.66 of 2010, under Sections 363/376/506/324/34 IPC, Police Station Bawana, Delhi, in which he stands convicted on 03.09.2022.

(iv) FIR No.457 of 2012, under Sections 147/186/353/332 IPC, Police Station Samaypur Badli, Delhi, in which he stands acquitted on 31.10.2019.

(v) FIR No.303 of 2016, under Sections 302/34 IPC and 25 Arms Act, Police Station City, Gohana, which is still pending trial.

(vi) FIR No.177 of 2019, under Sections 302/34 IPC and 25 Arms Act, Police Station Bawana, Delhi, which is still pending trial.

(vii) FIR No.227 of 2019, under Sections 307/120-B/34 IPC and 25 Arms Act, Police Station Bawana, Delhi, which is pending trial.

(viii) FIR No.273 of 2019, under Sections 307/506/34 IPC and 25 Arms Act, Police Station Bawana, Gohana, which is pending trial.

(ix) FIR No.204 of 2019, under Sections 392/34 IPC and 25 Arms Act, Police Station Bawana, Delhi, which is pending trial.

(x) FIR No.232 of 2021, under Sections 307/324/34 IPC and 25 Arms Act, Police Station Harsh Vihar, Delhi, which is pending trial."

4. Faced with the situation, Counsel for the petitioner submits that in majority of the cases the petitioner is on bail apart from three cases and in one of the case he has earned acquittal as well. Counsel for the petitioner

relies on the laid down by the Apex Court in Maulana Mohd. Amir Rashadi vs. State of U.P. and another, (2012) 2 SCC 382 and Prabhakar Tewari vs. State of U.P. and another, (2020) 11 SCC 648.

5. In *Maulana Mohd. Amir Rashadi's* case (*supra*), Apex Court held as under:

"6. It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc."

6. The same was further relied upon in *Prabhakar Tewari's* case (*supra*) wherein the question w.r.t. considering of criminal antecedents while considering bail was answered as under :-

"5. We have considered the respective submissions. The facts highlighted by the appellant are that the case involves offence under Section 302 read with Sections 120-B/34, 147, 148 and 149 of the Indian Penal Code, 1860. The accused has several criminal cases pending against him and has been named in the statement forming the basis of the FIR on the date of occurrence itself. Two individuals, Rahul Tiwari and Narendra Dev Upadhyay, whose statements have been recorded under Section 161 of the 1973 Code also refer to involvement of the accused Vikram Singh.

6. In the case of *Mahipal Vs. Rajesh Kumar @ Polia & Anr. (Criminal Appeal No. 1843 of 2019)* decided

*on 5th December, 2019, a coordinate Bench of this Court has discussed the scope of jurisdiction of the appellate Court in setting aside an order of granting bail. The two key factors for interfering with such an order are non-application of mind on the part of the Court granting bail or the opinion of the Court in granting bail is not borne out from a prima facie view of the evidence on record. In the case of **Maulana Mohammed Amir Rashadi vs. State of Uttar Pradesh and Another ((2012) 2 SCC 382)**, a two Judge Bench of this Court declined to interfere with an order of the High Court granting bail to an accused having considered the factual features of that case.*

7. On considering the submissions of the learned counsel for the parties. Having regard to the circumstances of this case, in our opinion, there has been no wrong or improper exercise of discretion on the part of the High Court in granting bail to the accused. The factors outlined in the case of Mahipal (supra) for testing the legality of an order granting bail are absent in the order impugned. The materials available do not justify arriving at the conclusion that the order impugned suffers from non- application of mind or the reason for granting bail is not borne out from a prima-facie view of the evidence on record. The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail. The High Court has exercised its discretion in granting bail to the accused Vikram Singh upon considering relevant materials. No ex-facie error in the order has been shown by the appellant which would establish exercise of such discretion to be improper. We accordingly sustain the order of the High Court granting bail. This appeal is dismissed."

7. Having heard counsel for the parties and after going through the records the records of the case, without

commenting on the merits thereof and keeping in view the prolonged incarceration suffered by the petitioner, in the peculiar facts & circumstances of the present case, the present petition is allowed. The petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

8. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.”

5. Bail plea of the petitioner is being opposed by the learned State counsel with eloquence claiming that the petitioner is a habitual offender and has number of cases registered against him. However, he is not in a position to dispute that in four out of five cases, the petitioner has already earned acquittal and in fifth he has already undergone the sentence awarded.

6. Keeping in view the incarceration suffered by the petitioner andwithout commenting upon the merits of the case and the fact that the co-accused on whose disclosure the petitioner was nominated already stands admitted to bail, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

7. Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

09.01.2024
spn

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