



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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1.

CRM-M No.63167 of 2023
Date of decision: October 16th, 2024
- Mohit @ Situ

.....Petitioner
- Versus
- State of Haryana

.....Respondent
2.

CRM-M No.62925 of 2023
- Sanjay

.....Petitioner
- Versus
- State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Vikas Gulia, Advocate
for the petitioner (in CRM-M-63167-2023).

Mr. Rakesh Kumar Lathwal, Advocate
for the petitioner (in CRM-M-62925-2023).

Ms. Trishanjali Sharma, Deputy Advocate General, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

This order shall dispose of the above-mentioned petitions filed under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to the petitioners, as they arise out of same FIR i.e. FIR No.27 dated 23.05.2021 under Sections 120-B, 302, 201, 34 of the IPC and Sections 25 and 27 of the Arms Act, registered at Police Station GRP Sonipat.

2. Learned counsel for the petitioners submit that a perusal of the FIR in question makes it abundantly clear that the instant case hinges

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solely on circumstantial evidence. It has been submitted that as per the allegations levelled in the FIR by the complainant (nephew of deceased Naresh), he received a telephonic call from PW-1 Krishan that his uncle Naresh (hereinafter referred to as 'deceased') had been shot at by some person. Learned counsel submit that even as per the allegations levelled in the FIR in question, no attribution had been made to either of the petitioners of being present at the scene of the crime much less of having fired towards the deceased. Rather, PW-1 Krishan had not mentioned the name of any assailant while informing the complainant about the alleged crime. Learned counsel have submitted that a false and fabricated version having been brought forth finds further credence from the fact that PW-1 Krishan, who purportedly informed the complainant about the crime in question, while stepping into the witness box, had not supported the case of the prosecution as a result of which he was declared hostile. Learned counsel have also submitted that all the material witnesses except for complainant-Rahul had been examined before the trial Court and had not supported the case of the prosecution as a result of which they were all declared hostile. In support, learned counsel has drawn the attention of this Court to Annexures P-3 to P-6, which are the testimonies of all the material witnesses. Learned counsel have further submitted that petitioner-Sanjay has been in custody since 03.05.2021, whereas petitioner-Mohit has been in custody since 02.07.2021, however, the trial has not yet concluded because complainant-Rahul has been repeatedly absenting



himself before the trial Court. It has been submitted that the complainant has since fled away to USA and gained entry through illegal means and hence, he cannot also be examined through video conferencing as his exact location in USA is unknown. Learned counsel have, therefore, prayed that since all the material witnesses stand examined and there is no specific attribution qua both the petitioners with respect to the fatal injuries sustained by the deceased, they be extended the concession o bail.

3. *Per contra*, learned State counsel while opposing the prayer and submissions made by the counsel opposite has not been able to dispute the custody period of both the petitioners; she has also not been able to dispute the stage of trial. On instructions, learned State counsel has conceded that all the material witnesses in the present case stand examined and have been declared hostile during trial. However, learned State counsel has drawn the attention of this Court to the allegations levelled in the FIR, which has been annexed as Annexure P-1 and stands reproduced hereinunder:-

“Statement of Rahul s/o Dalbir Singh, Jat, r/o village Karewari, PS Mohana, caste District Sonapat, age about 27 yeatrs, 10+2 pass, mobile no. 9050717338, stated that I am resident of above said address and driving private tempo. That on 22.05.2021, in the evening, I along with Vishal s/o Satbir r/o Karewari went to village Chitana for withdrawing of money from ATM. That at around 7:20 PM, Krishan s/o Mehar Singh, r/ village Karewari informed Vishal on his mobile phone that Naresh s/o Sultan, r/o village Karewari, PS Mohana, District Sonapat, at present Sarpant of village Karewari,



has been shot by someone near to railway fattak no, 25C, Karewari road and he is lying in injured condition. That Vishal informed me that your uncle Naresh has been shot. After getting the information I reached at the spot i.e. railway fattak no, 25C, Karewari road, where many people of our village were standing on the spot, where my uncle's motorcycle no. HR-10V-8807, Hero Splendor of black grey color had fallen and behind it bundle of green (Jawar) was lying and empty shells of bullets were also lying on the spot. In the west side of the road, my uncle Naresh was lying in injured condition in the fields of Lakhmi s/o Moji Ram, r/o village That from the spot, I took my uncle Naresh in injured condition in the car of Sunil s/o Rajbir, r/o Karewari, to PGI Khanpur for treatment. Where Doctor Sahab, after checking, told us that he is dead. I checked my uncle's body thoroughly, where two bullets on the chest, one bullet in the right side of stomach, one bullet on head left back and both bullets on chest were crossed the body. Six injuries were for sure on the body. That in the, Prachayat election in 2016, Kannu's brother namely Sanjay S/ Anand, caste Jat, r/o village Karewari, who was candidate of Sarpanch, lost against my uncle Naresh. After that he has started enmity with my uncle Naresh and our family, due to this enmity, associates had shot Kannu and killed two of supporters namely Jagbir and his son Anil. Before that Kannu's brother Sanjay and his father anand died in road accident, of which they also suspected my uncle Naresh. They used to say that accident was done by Naresh, whereas there was no such thing. Latter Kannu was killed in a police encounter in Punjab, after that Kannu's mother used to threaten to kill my uncle Naresh and said that I will take revenge which I am sure that the murder of my uncle Naresh was conspired by the accomplice of Kannu gang, who lodged in jail, by making conspiracy



and by sending Sahil s/o Bhan Singh, caste Dhanak, r/o village Karewari, at the spot for getting information and along with other persons killed by firing bullets. That legal action be taken against Kannu's mother, accomplice of Kannu gang lodged in jail, Sahil and other persons.”

4. Learned State counsel has submitted that the complainant, while lodging the FIR in question, had at the very first instance raised a suspicion qua the involvement of co-accused Sanjay as well as one Kannu Gang on account of some village politics. It has been further submitted that during investigation, it came to light that petitioner-Sanjay along with co-accused Sahil, had been in continuous touch through their mobile phone and had done a recce of the place of occurrence. Qua petitioner-Mohit, it has been submitted, on instructions, that he provided the weapon of offence to Sachin, who in turn gave it to Sahil.

5. On a further query put to the learned State counsel as to whether any other incriminating material had been collected against the petitioners, she, on instructions, has replied in the negative.

6. I have heard learned counsel for the parties and perused the relevant material on record.

7. In compliance of order dated 18.09.2024, report of learned trial Court has been received and the relevant part of the same stands reproduced hereinunder:-

“Though, it has not been mentioned in the zimni dated 16.07.2024 that the witness Rahul may be examined through video conferencing, however, some objections were raised by learned counsel for the



accused that there is difference of time of India and America and addition to this, recording of statement through video conferencing will not serve the purpose and will prejudice the rights of accused. However, on asking, they could not express as to what rights of the accused would get prejudiced in recording statement of Rahul through video conferencing. Later on, learned defence counsel also agreed that statement may be recorded but rights of accused be also observed. However, no particulars of Rahul for getting his statement recorded through video conferencing were provided. It was orally disclosed that there is enmity between both the parties due to multiple murders and out of fear, Rahul has fled abroad by illegal means and therefore, his statement cannot be recorded after identification from counselor. In the absence of any particulars pertaining to Rahul for recording his statement through video conferencing, statement cannot be recorded. This was an oral discussion in the Court with the defence counsel for the purpose of assessing the way out to record statement of Rahul and no order was passed in this regard in the absence of proper particulars of Rahul.”

8. Petitioner-Mohit alias Situ has been in custody since 02.07.2021 and petitioner-Sanjay has been in custody since 03.05.2021. All the material witnesses except the complainant stand examined and as already observed in the earlier part of this order, did not support the case of the prosecution, as a result of which they were declared hostile. Complainant has gained entry to USA through illegal means and hence, he cannot also be examined through video conferencing.



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9. In the facts and circumstances as enumerated hereinabove, the instant petitions are allowed. The petitioners be admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned. 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.

October 16th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No