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(214) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-63592-2023 (O & M)
Date of Decision: 07.08.2024

Kulwinder Singh @ Johnny @ Fauji
... Petitioner

Versus

State of Punjab
...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Harsh Chopra, Advocate,
for the petitioner.

Mr. Prabhdeep Singh Dhaliwal, AAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C is for the grant of regular bail to the petitioner in case bearing FIR No.63 dated 30.07.2016 under Sections 302, 201 and 34 IPC registered at Police Station Sarabha Nagar, District Ludhiana.

2. The present FIR came to be registered at the instance of Sachin Kumar and reads as under:-

Statement of Sachin Kumar S/o Jagpal Caste Balmiki R/o House. No. 63-L, Block B.R.S. Nagar, Ludhiana aged around 27 years. It is stated that I am the resident of the above said address and I am working in a private clothe shop. My brother Arun Kumar @ Anu aged around 28 years height 5'6", color whitish, eyes black brown, curly hair, subtle beard and moustache. On 28.07.2016, at



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around 07:10 P.M. (Evening). He went somewhere from home while he was wearing a black T-Shirt and brown Pajama and was also wearing black sleepers on his motor cycle Bajaj Platina bearing no. PB10DP-0638 Color Black Grey, Model 2012. He left his mobile and wallet at home. We tried to trace him on our on level with his friends and relative but we could get any information with regards to his whereabouts. Yesterday on 31.07.2016 I received a message from Chowki Raghunath Enclave that the above said motorcycle bearing no. PB10DP-0638 has been found in unattended condition from kanal bridge and we brought it home after identifying the same but till now we could not find my brother Arun Kumar @Annu. Now we have approached you to lodge the complaint. Action be taken. Today I have recorded my statement before you which is read over to me and the same is correct. Sd/-.

3. The body was found on 31.07.2016 and later, an SIT was constituted and added Section 302 IPC to the FIR.

4. The statement of Santosh Devi, mother of the deceased, was recorded, as per which she stated that her son had been murdered by Kancha and Ravi Kumar @ Billa (since granted bail vide order dated 05.11.2020 passed in CRM-M-14235-2020) alongwith their accomplices. Similarly, the statement of sister-in-law of the deceased was recorded to the same effect. Thereafter, the statement of the sister of the deceased was recorded to the effect that she had seen the deceased in the company of Ravi Kumar @ Billa. Kancha was arrested on 26.09.2020 and disclosed the name of the present petitioner and Vijay Kumar @ Chichidi. Vijay Kumar @ Chichidi was taken

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on production warrants as he was in custody in another case/FIR No.120/20 under Sections 307, 326, 324, 323, 506 and 34 IPC, Police Station Shimlapuri, Ludhiana.

The report under Section 173 Cr.P.C. stands presented against Sonu Kancha, Vijay Kumar @ Chichidi and Kulwinder Singh @ Johny @ Fauji (petitioner) who had been initially declared a proclaimed offender but subsequently was found in judicial custody in another case and arrested in the present case.

5. The learned counsel for the petitioner contends that there was absolutely no evidence against the petitioner inculcating him in the murder of the deceased. In fact, the petitioner was in custody between 17.09.2015 and 12.01.2017 and the occurrence had taken place on 29.07.2016 while the petitioner was in custody. Ravi Kumar @ Billa, a co-accused had been granted the concession of bail by this Court vide order dated 05.11.2020. As regards the petitioner being declared a proclaimed offender, he contends that once again the petitioner was in custody in another case between 28.09.2022 and 29.11.2023 because of which he could not appear in the present case. As the co-accused of the petitioner had been granted the concession of bail and only 09 out of the 20 prosecution witnesses had been examined so far, the Trial of the present case was not likely to be concluded anytime soon and therefore, he was entitled to the concession of bail.

6. The learned counsel for the State, on the other hand, has filed a reply dated 04.08.2024 which is taken on record. While referring to the said

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reply, he contends that the petitioner alongwith his co-accused had committed the offence in question. The petitioner remained absconding for long. Therefore, he was not entitled to the concession of bail. He, however, concedes that a co-accused, namely, Ravi Kumar @ Billa had been granted the concession of bail and that only 09 of the 20 prosecution witnesses had been examined so far.

7. I have heard the learned counsel for the parties.

8. The veracity of the prosecution case against the petitioner and his co-accused shall be adjudicated upon during the course of the Trial. Admittedly, a similarly situated co-accused, namely, Ravi Kumar @ Billa who has been named as an accused by the relatives of the deceased had been granted the concession of bail. As many as 11 prosecution witnesses still remain to be examined. Therefore, the Trial of the present case is not likely to be concluded anytime soon. In this situation, the further incarceration of the petitioner is not required.

9. Thus, without commenting on the merits of the case, the present petition is allowed and the petitioner-Kulwinder Singh @ Johny @ Fauji is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

10. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other case/crime other than the case(s) referred to in the petition.



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11. If any attempt whatsoever is made by the petitioner and/or his family members/friends to contact/threaten/intimidate any of the witnesses of the present occurrence, the State/complainant shall be at liberty to move an application for cancellation of bail granted vide this order.

12. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

13. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

August 07, 2024
sukhpreet

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