



CRM-M-64241-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-64241-2023 (O&M)
Date of decision: 08.08.2024

ARUN

.....Petitioner

VS.

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Ms. Harshita Kalra, Advocate
for the petitioner.

Mr. Gagandeep Singh Chhina, A.A.G., Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

CRM-19479-2024

Application is allowed as prayed for and zimni orders
(Annexure P-3) are taken on record.

Main case

1. The petitioner is seeking the concession of bail under Section 439 of the Cr.P.C. in case FIR No.179 dated 18.06.2018 under Sections 302, 323, 324, 449 IPC and Sections 25, 54 and 59 of Arms Act, 1959 registered at Police Station Arya Nagar, Rohtak District Rohtak.
2. Learned counsel for the petitioner submits that the petitioner has been in custody since 27.06.2018 in the present FIR. While drawing the attention of this Court to the allegations levelled in the FIR in question, which has annexed as Annexure P-1, it has been submitted that it was registered at the instance of Deepak @ Bablu, brother of the deceased,



against an unknown assailant, who had broken into their house while the complainant party was sleeping on the terrace; on being confronted, the brother of the complainant Kesh Nath (hereinafter referred to as 'deceased') was stabbed to death. When some other persons from the complainant party tried to catch hold of the unknown assailant, they too were not spared. Learned counsel has further submitted that the petitioner was nominated in the present case on the basis of the disclosure statement allegedly suffered by him in another FIR bearing No.183 dated 26.06.2018, wherein he self implicated him in the present case. It has also been argued by the learned counsel that the evidentiary value of such disclosure statement is admittedly of a weak nature and on this ground alone, the petitioner deserves to be extended the concession of bail, more so, when the trial has not proceeded further after the charges were framed way back on 30.11.2018. Learned counsel has also drawn the attention of this Court to the zimni orders, which have been annexed as Annexure P-3 and submitted that a perusal of the zimni orders clearly reveal that the case has been repeatedly adjourned to await the appearance of the prosecution witnesses despite the issuance ofailable warrants to secure the presence of the prosecution witnesses including the material witnesses i.e. complainant Deepak and the other eye witnesses. Learned counsel has still further submitted that in the aforementioned facts and circumstances, the petitioner although involved in some other criminal cases also, cannot be made to languish in custody for an indefinite period.

3. Per contra learned State counsel while opposing the prayer and submissions made by the counsel opposite, on instructions, has not disputed that the FIR in question was registered against an unknown assailant. It has



also not been disputed that other than the petitioner's alleged confession made before the police in another criminal case i.e. FIR No.183 dated 26.06.2018, there is no other incriminating material much less any test identification parade to link the petitioner with the crime in question. However, learned State counsel has disputed that after the charges were framed none of the prosecution witnesses have been examined. He, on instructions, submitted that one prosecution witnesses stands examined, however, the other material witnesses including the complainant, despite being summoned time and again despite issuance ofailable warrants to secure their presence, have been absenting themselves before the trial Court. Learned State counsel has drawn the attention of this Court to the criminal antecedents of the petitioner, which find reflected in his custody certificate and submitted that although the petitioner stands acquitted in six criminal cases, however, he has been convicted in some of the cases while in other criminal cases, which are pending against him, he is in custody.

4. Heard learned counsel for the parties and perused the relevant material available on record.

5. It would be apposite to reproduce the contents of the FIR in question, which are as under:-

“To, SHO, Police Station Arya Nagar Rohtak Sir, Deepak @ Bablu S/O Ramdas, Caste Chamar, resident of Village Karanhwa Belhar Kala District Sant Kabir Das Police Station Bakhira (Uttar Pradesh) presently residing at Chinyot Colony Rohtak, on dated 17/18-6-18 in Night time around 3:00 am, I and my brother Keshnath and about 10/12 people were also sleeping with us on the terrace which is our room on the



second floor. My brother heard the sound of the lock breaking. My brother Keshnath heard the sound and came down. When my brother tried to catch the lock-picker and called to us, at the same time, unknown person attacked upon my brother with a knife having in his hand. Hearing this noise, I, my friends and others were sleeping underside. Shashi Kumar or Panne Lal, Gubjan, Ramchet Yadav tried to catch an unknown person who, on seeing by me, stabbed my brother Keshnath with a knife and an Sua and when they tried to catch him while running away, he attacked also upon Shashi Kumar or Panne Lal, Gubjan, Ramchet Yadav and caused injuries and ran away from the spot, I, my friend and landlord Anil Kumar brought the injured to P.G.I. Rohtak for treatment, my brother was badly injured, due to which the doctor declared my brother Keshnath dead and started treating the rest of the victims. Unknown person entered our house with the intention of stealing and killed my brother. Legal action was taken against the unknown person. We can recognize that persons when we come in front of him.”

6. Concededly, the trial has come to a virtual stand still on account of the continuous non-appearance of the prosecution witnesses, which is apparent from a perusal of the zimni orders, which have been annexed as Annexure P-3. The petitioner’s further incarceration, in the aforementioned facts and circumstances in the present case, would serve no useful purpose. Hence, this Court deems it fit to extend the concession of bail to the petitioner.

7. Accordingly, the instant petition is allowed. The petitioner be admitted to bail on his furnishing bail/surety bonds to the satisfaction of the



Trial Court/Duty Magistrate concerned.

8. 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.

9. Needless to add, in case the petitioner misuses the concession of bail granted to him, the State would be at liberty to seek cancellation of the same.

08.08.2024

Pd

**(MANJARI NEHRU KAUL)
JUDGE**

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