

227

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.65400 of 2023 (O&M)

Date of decision : 10.01.2024

Mohd. Asif

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Mohd. Jameel, Advocate for the petitioner.

Mr. J.S.Arora, DAG, Punjab.

PANKAJ JAIN, J. (ORAL)

1 This petition has been filed under Section 439 Cr.P.C. for grant of regular bail in case F.I.R. No.177 dated 31.07.2022 registered under Sections 302/34 IPC and Section 25 of Arms Act (later on Section 34 IPC was deleted and Sections 120-B/148/149 IPC has been added) at Police Station City-I, Malerkotla, District Malerkotla.

2 FIR was registered on the statement of Akbari w/o Mohammad Akbar alleging as under :-

"Copy of the statement, "Statement of Akbari w/o Mohammad Akbar, R/o Ward No.20, Navi Abadi, Outside Sihandi Gate, Malerkotla, age about 40 years, Mobile No. 98159-31786. Stated that I am a resident of above mentioned address and am a housewife. My marriage was solemnized with Mohammad Akbar s/o Fateh Mohammad, resident of Navi Abadi, Outside Sirhandi Gate around in the year 2005. I have two sons and one daughter. Elder son is Mohammad Isa aged around 16 years, younger to him is daughter Mariyam, aged around 13 years and younger to her is son Mohammad Ujur aged around 10 years. My husband runs Akbar Gym in Kubha Colony, Opposite Indasa Factory on Ludhiana Bypass Road, Malerkotla. I and my husband often go to my

husband's aforesaid gym. As usual, today on 31.07.2022 at around 7.30 A.M. we alongwith my son Mohammad Ujjair on our car make Dezire whose number is not known to me, the car was being driven by my husband, on which we had gone to the aforementioned gym. We had opened the gate of the aforesaid gym and were setting the things in place inside the gym, when at around 7.45 A.M., an unknown persons had came inside the gym who had called my husband Mohammad Akbar to him by calling him and on being called upon by that unknown persons, my husband had gone near him. On which, the aforesaid persons had at once taken out weapon out of his dab and had fired bullet in my husband Mohammad Akbar's chest on the left side near the heart. On which, my husband had fell down and the unknown person alongwith his weapon alongwith another unknown person accompanying him who was standing outside the gym had run away from the spot. After that, I had called up my brother in law Abdul Rashid s/o Fateh Mohamad from my phone on his phone. After sometime, Abdul Rashid had also reached there. Then Abdu Rashid had put in my husband in our same car in which we had reached the gym in the morning and had got him admitted in Civil Hospital, Malerkotla. At Civil Hospital, Malerkotla, the doctor declared dead my husband.”

3 Thereafter Mohammad Rijwan son of the deceased on 01.08.2022 is stated to have suffered supplementary statement implicating the present petitioner and as per the prosecution the role assigned to the petitioner in police report reads as under :-

“Around one week back, at Sirhandi Gate, Malerkotla, my father Mohammad Akbar in my presence had asked aforesaid Wasim Iqbal alias Soni to return the money taken on loan. At that time Wasim Iqbal alias Soni was accompanied by his second wife Praveen's brother Mohammad Asif S/o Mohammad Akhtar R/o Chhota Khara, Malerkotla too. At that time both of them had a lot of argument with my father Mohammad Akbar. Wasim Iqbal @ Soni and his brother in law Mohammad Asif had left while threatening to kill my father Akbar Khan. Then aforesaid Wasim Iqbal and his brother in law Mohammad Asif

had conspired to kill my father Mohammad Akbar. Due to this Wasim Iqbal alias Soni taking along with himself Mohammad Shadab S/o Naseem R/o Peerad P.S. Naagal, District Saharanpur and Tehmeem S/o Naseem R/o Bagra P.S. Titavi, District Muzaffar Nagar, U.P. had taken a Fortuner vehicle from Buntty R/o Malerkotla on some pretext and had gone to U.P., where he had bought and brought desi katta and alive rounds and had given it to his brother in law Mohammad Asif. It has also come to knowledge that at the time of bringing arms from U.P., Wasim Iqbal alias Soni had taken along with second wife Praveen without telling anything along with himself in the vehicle. Then on the night of 31.07.2022, Wasim Iqbal alias Soni had given a motorcycle Honda City-110 from his shop to his brother in law Mohammad Asif. That Mohammad Asif under a planned conspiracy taking along his friend Mohammad Murshad S/o Mohammad Shamshad R/o Mohalia Ballu Ki Basti, Kailo Gate, Malerkotla on the aforesaid motorcycle at 7:45 a.m. had gone to our gym in Kubha Colony, Near Ludhiana Bypass, Malerkotia and had killed my father by firing bullets at him and had ran away from the spot. Wasim Iqbal alias Soni, with the intention to usurp his money taken on loan from my father Mohammad Akbar, in connivance with Mohammad Shadab, Tehmeem, Mohammad Asif and Mohammad Murshad, had got killed my father Mohammad Akbar through his brother in law Mohammad Asif and his friend Mohammad Murshad by firing bullets.”

It is based upon the statement made by Mohammad Rijwan only.

4 Learned counsel for the petitioner has relied upon statement made by complainant who appeared as PW-1 as well as Mohammad Rijwan who appeared as PW-2 to submit that none of the aforesaid witnesses have supported the prosecution and have been declared hostile.

5 Learned State counsel submits that there is an incriminating evidence in the form of pistol recovered from the present petitioner, however, he submits that the ballistic report is yet to be received.

6 Custody certificate has been filed. The same is taken on record. As per the custody certificate, the petitioner is behind bars for about more than 1 year, 5 months and 3 days and has no criminal antecedents.

7 Learned State counsel on instructions from ASI Gurdeep Singh is not in a position to dispute the aforementioned factual assertions based on record.

8 I have heard learned counsel for the parties and have gone through the records of the case.

9 Considering the allegations levelled against the petitioner, the nature of the evidence and the fact that neither the complainant-wife of the deceased nor the son of the deceased, has supported the case of the prosecution, 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.

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

(PANKAJ JAIN)
JUDGE

10.01.2024
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No