



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

258

CRM-M-65360-2024

Date of decision: 13.01.2025

Rajiv Kumar @ Pappy

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Vivek Goyal, Advocate
for the petitioner.

Mr. Yuvraj Shandilya, AAG, Haryana.

MANJARI NEHRU KAUL, J.

1. This is the second petition filed by the petitioner seeking the concession of regular bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in case FIR No.37 dated 27.09.2021 under Sections 148, 149, 201, 302, 307, 427 and 120-B of the IPC, registered at Police Station Sector-7, District Panchkula, contending that further incarceration of the petitioner would be unwarranted given the specific facts and circumstances of the case.

2. On a pointed query put to the learned counsel for the petitioner as to what is the material change in circumstances after the withdrawal of the previous petition on 15.10.2024, wherein similar relief had been sought by the petitioner, it has been contended that both the material witnesses had failed to identify the petitioner as a result of which they were both declared hostile.

3. Furthermore, learned counsel for the petitioner has drawn



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the attention of this Court to the FIR annexed as Annexure P-1. It has been submitted that a plain reading of the FIR reveals that the alleged incident is based on an eye witness account; however, the petitioner was not named therein as an accused. The complainant, while lodging the FIR, stated that apart from the named accused, there were 4-5 unidentified persons, who allegedly participated in the crime. The complainant further asserted that he would be able to identify these unidentified persons if they were brought before him.

4. It has been further submitted by learned counsel for the petitioner that when the complainant stepped into the witness box during trial, he did not identify the petitioner as one of the unidentified persons involved in the alleged crime. Consequently, the complainant was declared hostile. In support, learned counsel has drawn the attention of this Court to the deposition of the complainant, which is annexed as Annexure P-7.

5. Additionally, learned counsel for the petitioner has contended that another material witness, PW Anand Singh, who also claimed to have witnessed the occurrence, similarly failed to identify the petitioner as a participant in the crime. As a result, he too was declared hostile. In support of his contention, learned counsel has drawn the attention of the Court to PW Anand Singh's testimony annexed as Annexure P-8.

6. It is submitted by learned counsel for the petitioner that the petitioner has been in custody since 22.11.2021, and his further incarceration would serve no useful purpose, particularly since 11



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prosecution witnesses are yet to be examined, and therefore, the trial is expected to take a considerable amount of time to conclude.

7. Learned counsel for the petitioner has further highlighted that five co-accused have already been granted bail by this Court vide orders annexed as Annexures P-2 to P-6.

8. *Per contra*, learned State counsel has vehemently opposed the prayer and submissions made by learned counsel for the petitioner. Learned State counsel has reiterated the allegations levelled in the FIR, which stands reproduced hereinunder:-

“Copy of the statement as follow that statement of Rinku s/o Suraj Bhan R/o H.No. 152 Power Colony, Phase-2, Sector- 19 aged about 32 years mob. 77430-52202; stated that I am the resident of above-mentioned address and doing the work of sale purchase of second hand cars. On the night of 26.09.2021, I alongwith my partners Rinku s/o Amarjeet resident of Ropar and Anand resident of Himshikha Colony, Panchkula, were coming towards Majri Chowk from Simran Hotel, Mamta Enclave, Zirakpur after getting meal, in my car i10 No. HR05-6636. When we stopped near the bus stop Majri Chowk, then at about 11:30 PM two cars and two motorcycles were came and stopped near our car, from which about 10/12 person came out and they have Sword, Gandasi and Wooden Sticks (Dande) in their hands who started damaging my car with their weapons, so we three came out from the car and ran away to save our lives, so one boy out of them namely Sekhar resident of Maheshpur raised "Lalkara" that they all of these should not alive, finish them off today. Boys came with them Joni @ Pardeep resident of Khadak Mangoli presently resident of Handesra, Pappi s/o unknown resident of Aashiyana Sector 20, Vakili s/o Unknown resident of Khadak Mangoli, Manish @ Bahadur s/o Jagbir resident of Khadak Mangoli, Babbi resident of Fatehpur Sector 20, Panchkula, Bada Bahadur s/o Mangu resident of Khadak Mangoli and 7/8 other boys whom I would identify them if they brought before me, they gave injuries on the face and head of the Rinku s/o Amarjeet with their weapons after attacking by surrounding him and we ran towards colony to save our lives then I seen while running, Rinku was lying down and they all attacking him with their weapons. At that time, we



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entered in Khadak Mangoli to save our lives, when we came back on the spot after about 10/15 minutes, we saw that Rinku was lying on the earth in died condition and huge amount of blood was spread over the spot. Rinku s/o Amarjeet was killed by above said persons with Sword, Gandasi and Wooden Sticks (Dande). That this incident was committed by the abovesaid persons due to our old enmity. Legal action kindly be taken against all of them. Sd/- Rinku Kumar 77430-52202”

9. However, learned State counsel, on instructions, has not disputed that the petitioner was not named as an accused at the time of the registration of the FIR; both the material witnesses including the complainant, who allegedly witnessed the occurrence, failed to identify the petitioner as one of the unidentified individuals involved in the crime, resulting in their being declared hostile. The counsel for the State, on instructions, has not disputed the custody period of the petitioner nor has he disputed the stage of trial.

10. I have heard learned counsel for the parties and perused the material placed on record.

11. The case at hand is based on an eye witness account. However, neither the complainant nor the other material witness, PW Anand Singh, identified the petitioner as one of the individuals who participated in the alleged crime. Both were declared hostile for failing to support the case of the prosecution. The petitioner has been in custody for more than three years having been arrested on 22.11.2021. The trial is still underway with 11 prosecution witnesses yet to be examined, its conclusion is likely to take a considerable amount of time. Five co-accused have already been granted bail under similar



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circumstances.

12. Considering the aforementioned facts and circumstances, this Court deems it appropriate to extend the concession of bail to the petitioner. 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. 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.

13. 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.

13.01.2025

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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