

HIGH COURT OF PUNJAB AND HARYANA**Bench: Justice Arun Monga****Date of Decision: 03.10.2023**

CRM-M-31936 OF 2023 (O&M)

Abhishek**...Petitioner****Versus****State of Haryana****...Respondent****Sections, Acts, Rules, and Articles:**

Section 302, 380, 457, 120-B, 34 of Indian Penal Code (IPC)

Section 25, 29 of Arms Act, 1959

Subject: Bail application of the petitioner, who is accused under various sections of the IPC and the Arms Act.**Headnotes:**

Bail Application – Rejection by Trial Court – Appeal for release before High Court – Petitioner implicated under Section 302 read with Section 34 of IPC and Section 25 of the Arms Act – Petitioner under preventive custody since 29th October 2021. [Para 1]

Prosecution Case – Death due to bullet injury – FIR registered based on statement by father of the deceased – CCTV footage and co-accused statements implicate petitioner – Co-accused Narender arrested and provided a disclosure statement implicating petitioner at the crime scene. [Para 2-2.2]

Court Observations – Challan presented and charges framed – Only 10 out of 51 prosecution witnesses examined – Petitioner's extended period in custody and slow trial progress noted – No evidence of potential tampering or witness influencing. [Para 5-8]

Decision – Grant of Bail – Petitioner ordered to be released on bail, subject to certain conditions – Observations made limited to the instant bail petition and not to affect the merits of the main case. [Para 10-14]

Referred Cases: None.

Representing Advocates:

Mr. Ankur Lal, Advocate for the petitioner

Mr. Karan Garg, AAG, Haryana for the State

ARUN MONGA, J. (ORAL)**CRM-40457-2023**

For the reasons stated in application, same is allowed and documents contained at Annexures P-4 to P-12 are taken on record, subject to all just exceptions.

MAIN CASE

After being declined bail by learned trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.401 dated 19.10.2021, registered under Section 302 read with Section 34 of Indian Penal Code, (for short "IPC") and Section 25 of Arms Act, 1959 (for short 'Arms Act') (subsequently Section 34 IPC deleted and Section 120-B IPC added and Sections 27 and 29 of Arms Act also added) at Police Station City Rewari, District Rewari.

2. Per the prosecution's case, on 19th October 2021, ASI Sandeep Kumar, Incharge of the Police Post, received a telephonic message that a young boy was lying in front of the Oxygen Centre, having been hit by a bullet. He, along with other police officials, reached the spot and transported the injured individual to the General Hospital, where he was declared dead on arrival. Harish Kumar, the father of the deceased, met with ASI Sandeep and provided his statement. He stated that he had two sons, with his younger son, Gaurav Yadav, aged 26 years, leaving the house at approximately 5:45 p.m. At 6:30 p.m., Parveen, the son of Kuldeep, arrived at his house on a bike and informed him that Gaurav was lying in front of the Oxygen Centre with a bullet injury.

2.1. Harish further disclosed that on 12th October 2021, his son had left on a Bullet motorcycle with registration No. HR-36-AC-5565, for attending a birthday party of his friend Lakshay. When Gaurav did not return home, Harish went to Lakshay's house, but no one was there. After two days, Gaurav returned without the bike, mentioning that it was parked at the Daruherra Octroi Post with one of his friends, who would bring it back later. Harish suspected that Lakshay and Parveen had knowledge of the incident and the whereabouts of the bike. Further inquiry revealed that, before being shot, Gaurav had been sitting at the shop of Lakshay's brothers on Kaluwas Road, smoking a hookah. Four young boys, whose names were unknown to him, approached on a bike and a scooter and fatally shot his son. An FIR was registered.

2.2. During the investigation, CCTV footage was collected, and co-accused Narender, alias Minder, was arrested on 21st October 2021. During interrogation, Narender provided a disclosure statement admitting his involvement in the crime and implicating the petitioner as being present at the scene of the incident. He revealed that he and other co-accused had acted as part of a criminal conspiracy and intercepted the deceased, with co-accused Neeraj firing the fatal shot. Co-accused Raju Punjabi was arrested on 28th October 2021, also implicating the petitioner's presence at the scene. The petitioner and co-accused Neeraj were arrested on 29th October 2021 and have been in custody since then. Co-accused Neeraj confirmed that the petitioner was riding pillion on the vehicle with him, and he executed the murder of Gaurav by shooting him. The weapon used in the crime was recovered based on the petitioner's information. Co-accused Yogesh, alias Bullet, was arrested on 2nd December 2021, and he disclosed that he provided the weapon and ammunition to co-accused Narender, alias Minder. Based on this information, co-accused Umesh was arrested on 3rd December 2021, who disclosed selling the weapons and receiving Rs. 30,000 via UPI.

3. Learned counsel for the petitioner contends that the petitioner was falsely implicated in the case. He further argues that the complainant did not initially name the petitioner, and the petitioner's name only appeared in the disclosure statement of co-accused Narender, alias Minder. Nothing incriminating was recovered based on this disclosure statement, and it is a case of circumstantial evidence.

3.1. The learned counsel relies on the testimony of PW-2 Kamal Yadav and submits that this key witness stated in his deposition that, upon viewing the CCTV footage, it was not the petitioner who was present at the scene of the incident. Therefore, the entire prosecution's version claiming the petitioner's presence at the scene based on CCTV footage remains unproven. Additionally, there is no credible evidence against the petitioner other than the CCTV footage, and he is being held in custody solely based on the disclosure statement made by co-accused Narender, alias Minder. The counsel also argues that this disclosure statement was obtained while the petitioner was in custody and may not be admissible as evidence. Furthermore, based on the testimonies of prosecution witnesses examined so far, there is a likelihood that the trial will result in the petitioner's acquittal, as eyewitness-PW-9 Divyanshu has retracted from his previous statement and did not support the prosecution's version. His testimony is attached to the petition as Annexure P-11.

3.2. The learned counsel further argues that the investigation is complete, the charge sheet was filed long ago, and nothing more needs to be recovered from the petitioner. There is no risk of the petitioner tampering with evidence or influencing prosecution witnesses.

4. On the other hand, the learned State counsel opposes the bail petition. He asserts that if the petitioner is granted bail, there is a risk of him fleeing from the trial proceedings. The petitioner has a history of criminal involvement, with

three other cases pending against him, two under Sections 457 and 380 of the IPC and a third case under Section 25 of the Arms Act. The State counsel further argues that the petitioner was part of a criminal conspiracy, and his presence at the scene is established by the CCTV footage.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.
6. Learned State counsel, on instructions from ASI Pintoo, submits that challan was presented and charges were framed on 06.06.2022. There are total 51 prosecution witnesses, out of which only 10 have been examined so far. Allegations against petitioner are matter of trial. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Conclusion of trial is likely to take quite some time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for more than one year and 11 months, being in custody since 29.10.2021.
7. Petitioner is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/ or influence witnesses. There is no probability of tampering with evidence as the same has already been seized by the investigating agency. As regards witnesses, most of the material witnesses have already been examined.
10. Petitioner is stated to be a 22-year young person. Being a family person and fixed abode, it is unlikely that he is flight risk or will flee from the trial proceedings.
11. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.
12. Accordingly, petitioner is ordered to be released on bail, if not required in any other case, on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where his case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

13. In case, petitioner is found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.
14. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition alone and learned trial Court shall proceed without being influenced with this order.
15. Pending application(s), if any, shall also stand disposed of.

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