

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

Crl. Misc. No.M-1203 of 2014

Date of decision: March 14, 2014.

Ramesh

... **Petitioner**

v.

State of Haryana

... **Respondent**

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON

Argued by: Shri J.S. Bedi, Sr. Advocate with
Shri Ranjit Singh, Advocate, for the petitioner.

Shri S.S. Goripuria, Deputy Advocate General, Haryana.

Dr. Bharat Bhushan Parsoon, J.

Petitioner seeks regular bail in case FIR No.194 dated 21.5.2013 under Sections 148, 149, 332, 353, 186, 201, 307, 120-B IPC and 25, 27 and 29 of the Arms Act, 1959, registered at Police Station Shivaji Colony, Rohtak.

2. Hearing has been provided while perusing the paper book.

3. The petitioner is facing trial, inter-alia, for commission of the offence under Section 307 IPC. As per the prosecution case, elections of Municipal Corporation, Rohtak were to be held. A secret information became available to the police of Crime Branch, Rohtak from a police party of Delhi Police headed by Inspector Ishwar Singh that some criminals possessed with weapons had come from UP with an intention to commit murder of a candidate who was contesting election of Municipal Corporation, Rohtak and that they were sitting in the office of Shri Balaji

Properties, opposite Sugar Mills, Rohtak. On this information, two teams were organized by DSP Sumit Kumar.

4. Unprovoked firing was made by 3-4 lads on one team of the police, which had reached near the office of Shri Balaji Properties where the culprits had collected. The said boys were standing near Ertiga car bearing registration No.DL-10FA-2554. On seeing the police party, they tried to escape using the said Ertiga vehicle. When they were fleeing away from the spot towards Jhajjar octroi post, four of the group of the assailants were nabbed. One of the accused viz. Ravi Pal was injured.

5. During the course of interrogation, it was discovered that the four arrested accused along with 7 others had come to Rohtak at the instance and asking of the petitioner for committing the murder of Naresh @ Kala who was contesting election of Municipal Corporation, Rohtak.

6. Bail has been sought by the petitioner, claiming, that he has been falsely implicated and disclosure statements made by his co-accused are of no legal relevance. It is asserted that he has no concern with the present case. It is claimed that neither the petitioner was present nor any role was played by him. It is averred further that continuance of the petitioner in custody would not serve any purpose.

7. One of the accused, namely, Ravi, who was injured, died later. Three of the assailants could not be apprehended and are now proclaimed offenders. Remaining seven assailants, including the petitioner, are in custody. They are facing trial. The petitioner concededly was not present at the place of occurrence.

8. It is stand of the respondent-State that the petitioner-accused is the kingpin of the group and being inimical towards Naresh @ Kala of his

village, he had organized a group of assailants who with lethal weapons and arms had come to commit his murder. It is also claimed that all weapons were provided by the petitioner-accused Ramesh and Rs.5.00 lacs were spent in such purchase. Criminal record of the petitioner has been put forth by the respondent wherein 8 FIRs have been shown to be listed against the petitioner. However, counsel for the petitioner states that in five cases, he has been acquitted and in the rest three cases (out of which two are only under Section 25 of the Arms Act, 1959 and one is inter-alia under Section 307 IPC), he is facing trial. This position on facts is not disputed by the State.

9. Mere registration of an FIR and conducting of investigation pursuant thereto *ipso facto* would not be a circumstance to be construed against the petitioner in matter of grant of bail. Even the fact of registration of multiple FIRs earlier to the alleged commission of the present offence by itself will not be an impediment in grant of regular bail. Considerations for grant or refusal of bail are entirely different. Rather, it is to be evaluated by the Court as to whether the accused, if granted bail:-

- (i) would abide by the conditions imposed for his release;*
- (ii) would remain within or flee from the jurisdiction of the court; and*
- (iii) would tamper with the evidence or unduly influence the witnesses thereby polluting the administration of justice.*

10. In somewhat similar tone, dismissing a petition for cancellation of bail and approving the grant of bail by the High Court of Judicature at Allahabad, where the accused had certain FIRs registered against him, rejecting the plea of the prosecution that the accused was a habitual criminal as he was facing trial in number of cases, Hon'ble Supreme Court in Maulana Mohd. Amir Rashadi v. State of U.P. And another, 2012 (1) RCR (Crl.) 586, had observed as under:-

“It is not in dispute and highlighted that the second respondent

is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

11. Thus role and sweep as also participation of the accused in commission of the present crime and as to whether he would be regularly attending the proceedings, are the circumstances which are to be taken into consideration.

12. So far as role of the accused-petitioner in the present FIR is concerned, the offence of murder for which the non-applicants accused mentioned in the FIR allegedly at the instance of the petitioner had collected at the spot, was never committed. Preparation for commission of the offence of murder *ipso facto* does not invite criminal liability. Reference may be made to Koppula Venkat Rao v. State of Andhra Pradesh, 2004(2) RCR (Crl.) 189, wherein it was observed by the Hon'ble Supreme Court of India:-

“9. ... Mere intention of commit an offence, not followed by any act, cannot constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under Section 122 (waging war against the Government of India) and Section 399 (preparation to commit dacoity). The dividing line between a mere preparation and an attempt is sometimes thin and has to be decided on the facts of each case. There is a greater degree of determination in attempt as

compared with preparation.”

13. Even going by the prosecution case, the petitioner was neither present at the spot nor at any point of time had shared common intention or the common object of committing an alleged murderous assault on the police officials or of causing interference in discharge of their official duties. Thus, merely on the ground that the non-applicant accused were caught while assaulting the police officials, legally is not sufficient to ascribe any role, when nothing is attributed to the petitioner in commission of the present crime. Even taking the prosecution case as such, criminal conspiracy, i.e., to commit murder, which was alleged object of the unlawful assembly, wherein the present petitioner was not present, was never achieved and concededly, there is no role of the petitioner accused in commission of the alleged present crime.

14. The petitioner is in custody since 31.5.2013. The trial is not picking up the speed it requires keeping in view the allegations of the prosecution. It is likely to take a long time to conclude. Rather, conclusion of the trial is nowhere in sight. Continuation of the petitioner in custody in these circumstances would not serve any purpose.

14. Consequently, this petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Rohtak.

[Dr. Bharat Bhushan Parsoon]

March 14, 2014.

Judge

kadyan