

2025:PHHC:069851



**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

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**CRA-S-450-2025 (O&M)**

**Date of decision: May 21, 2025**

YOGENDER @ YOGESH @ YOGI

.....Petitioner

Versus

STATE OF HARYANA AND ANOTHER

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. L.S. Mann, Advocate with  
Mr. Shashikant Singh, Advocate and  
Mr. Ashish Pandey, Advocate  
for the petitioner.

Mr. Yuvraj Shandilya, AAG, Haryana.

**MANJARI NEHRU KAUL, J.**

1. The present appeal is directed against the order dated 24.12.2024 passed by learned Additional Sessions Judge, Nuh, whereby the application for grant of regular bail to the appellant in case FIR No.326 dated 18.07.2020 under Sections 302, 307 and 120-B of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959 and Section 3(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Police Station Nuh, District Mewat (Annexure P-1), was rejected.

2. Learned counsel for the appellant submits that the entire case of the prosecution hinges upon the alleged dying declaration made by Om Prakash (hereinafter referred to as 'deceased No.1'), purportedly recorded by the complainant, who is the brother of deceased No.1. According to this version, deceased No.1 named 3 persons including one Labri s/o Rajbir, as being directly involved in the occurrence which took place, wherein the son



of deceased No.1 succumbed to firearm injuries. It has been submitted that in the dying declaration recorded by deceased No.1, he had also alleged that the occurrence had been given effect to at the behest of the appellant.

3. It has been further contended that subsequently, while giving his statement under Section 161 Cr.P.C., on 20.07.2020, deceased No.1 attributed a more and direct role to the appellant by alleging that he had himself fired upon both him and his son, Kishan Chand (hereinafter referred to as 'deceased No.2'). It has, however, been argued by learned counsel for the appellant that this subsequent version is a clear and material improvement over the initial account and is inherently unreliable.

4. Learned counsel for the appellant has further contended that the complainant, who allegedly recorded the initial dying declaration, was not an eyewitness to the occurrence. The FIR was lodged based on what was reportedly narrated by deceased No.1 to the complainant. It has been emphasized by the learned counsel that there are significant inconsistencies between the allegations recorded in the FIR and those contained in the statement recorded under Section 161 Cr.P.C. These contradictions, it is submitted, seriously undermine the credibility of the prosecution version.

5. It has also been pointed out that three persons named in the FIR as co-accused were exonerated during investigation and no application under Section 319 Cr.P.C. was ever filed by the prosecution for summoning them as additional accused during trial. This, according to the learned counsel, raises doubts about the authenticity of the entire case of the prosecution.



6. It has still further been argued that out of the 28 prosecution witnesses cited, only 9 have been examined so far, and all the material witnesses, including the complainant, have already testified. Therefore, further incarceration of the appellant, who has been in custody for nearly 5 years, would not serve any useful purpose at this stage.

7. Mr. Deepak Grover, Advocate has put in appearance on behalf of respondent No.2/complainant and filed his Power of Attorney in the Court today, which is taken on record.

8. *Per contra*, learned State counsel assisted by learned counsel for the complainant, has vehemently opposed the prayer and submissions made by the counsel for the appellant. The allegations contained in the FIR (Annexure P-1) have been reiterated and reliance has also been placed upon the statement made by deceased No.1 under Section 161 Cr.P.C., annexed as Annexure P-3. It has been urged that the appellant played a key role in the commission of the offence and that the gravity of the allegations do not warrant the concession of bail to him.

9. However, when confronted with the apparent discrepancies between the FIR and the statement recorded under Section 161 Cr.P.C. of deceased No.1, learned State counsel as well as counsel for the complainant were unable to offer any cogent explanation.

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



11. *Prima facie*, the case of the prosecution suffers from serious infirmities and serious inconsistencies at this stage. Moreover, the FIR itself is not based on direct knowledge but purportedly on the version narrated by the injured-deceased No.1.

12. The appellant has already undergone a prolonged period of incarceration after having been arrested on 10.08.2020. All material witnesses have been examined, and only 9 out of 28 prosecution witnesses have deposed so far. The possibility of the appellant, therefore, trying to intimidate or influence the witnesses, appears to be minimal at this stage.

13. In the circumstances, further incarceration of the appellant would serve no useful purpose, especially when the trial is likely to take considerable time to conclude.

14. In view of the foregoing, this Court deems it fit to extend the concession of regular bail to the appellant.

15. Accordingly, the instant appeal is allowed, and the appellant be admitted to bail on his furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

15. 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.

**May 21, 2025**

*Jaspreet Kaur*

*Whether speaking/reasoned*

*Whether reportable*

**(MANJARI NEHRU KAUL)**

**JUDGE**

: *Yes/No*

: *Yes/No*