



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



S.B. Criminal Misc. Bail Application No. 12285/2024

1. Mahesh Kumar S/o Late Shri Bhagwana Ram, aged about 24 years, resident of Aagar, Police Station Sanchore, District Sanchore.
2. Nagji Ram @ Nagji S/o Late Shri Ganesha Ram, aged about 35 years, resident of Dadusan, Police Station Sarwana, District Sanchore.
(At present lodged In District Jail Jalore)

----Petitioners

Versus

State of Rajasthan through PP

----Respondent

For Petitioner(s) : Mr. Kunal Upadhayay.
For Respondent(s) : Mr. Narendra Singh Chandawat, PP
with Mr. Surendra Bishnoi.

HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI

Order

REPORTABLE

09/10/2024

1. Petitioners are lugged and locked in F.I.R No. 268/2023 of Police Station Sanchore, District Jalore, for the offences under Sections 449, 302/34 of the Indian Penal Code and under Section 3/25, 27 of Arms Act. They have filed this application for restoration of liberty under Section 439 of the Code of Criminal Procedure, 1973 (Section 483 of BNSS).

2. Shorn of details, the facts leading to this bail application are that Prakash, the son of the deceased Masinga Ram, lodged an F.I.R. on 20.5.2023 stating that the previous day, around 6 p.m., his father was sleeping at home while he was working nearby.



During that time, two individuals with their faces covered entered into the house and attacked his father. They cut his father's nose with a knife and inflicted injuries on various parts of his body. Additionally, they fired a pistol at his father. When his father screamed, both the attackers fled. While they were running away, a man named Lakha Ram, who was passing in front of the house, witnessed the assailants. Unfortunately, Prakash's father succumbed to his injuries during treatment.

3. Shri Kunal Upadhayay, learned counsel representing the petitioners vehemently urged that petitioners are innocent persons and a false case has been foisted against them; that entire allegations so leveled by the police against the petitioners are totally false and baseless; that there is no evidence worth the name on record to connect the petitioners with the alleged crime. Concluding submissions, he asserted that petitioners are entitled to be enlarged on bail.

4. Learned Public Prosecutor for the State has strongly objected the different submissions made by learned counsel for the applicant and submitted that investigating officer had collected overwhelming evidence in the case which would *prima facie* point towards the guilt of the accused. He thus, craves rejection of the applicants' bail application.

5. I have appreciated the submissions advanced by the learned defence counsel and learned Public Prosecutor and have carefully perused the material available on record.



6. Upon perusal of the record and consideration of the submissions, it is clear that the incident in question occurred on 19.05.2023. According to the facts of the case, no individual was named in the F.I.R., nor was their identity disclosed. The accused had covered their faces with cloth. The complainant, Prakash, did not express suspicion against any individual, nor did he mention any enmity or rivalry with anyone, in F.I.R.

7. Accused Mahesh Kumar and Nagi Ram @ Nagji were arrested on 10.06.2024. On 25.06.2024, statements under Section 161 of the Cr.P.C. were recorded from Lakharam, the deceased's father Sagtaram, mother Nabudevi and wife Mafidevi. In statements made a year after the incident, Lakharam claimed to have seen both Mahesh Kumar and Nagi Ram fleeing from the scene and stated that he had informed the deceased's family of this at the time. However, the deceased's family did not forward this information to the police immediately after the incident. Prakash, the complainant, did not give any such statement to the police the day after the incident, nor did he mention that Lakharam had informed him or the family of the names of the accused.

8. Additionally, Lakharam did not provide any specific identifying details about the accused's motorcycle or any other concrete evidence. In the police investigation, it was concluded that the deceased Masingaram had previously murdered the father of accused Mahesh Kumar in 2012, and Masingaram was released on bail in 2018. The prosecution theorised that Mahesh Kumar, in collusion with Nagi Ram, murdered Masingaram in revenge, for the 2012 murder.



9. However, the star witness, Lakharam's statements were recorded a year after the incident, raising significant doubts about the reliability of his identification and recollection of events. The delay in providing crucial evidence creates *prima facie* doubts about the accuracy and veracity of his testimony. Although Lakharam claims to have identified both accused but Prakash, the complainant, did not provide such information to the police while lodging of F.I.R. The absence of such a crucial fact during the investigation weakens the prosecution's case against the petitioner.

10. Moreover, there is no direct eyewitness testimony regarding the murder, and the identity of the assailants was neither immediately known nor disclosed. The key evidence appears to be circumstantial, based on Lakharam's later statement that he saw the accused fleeing, which could easily be challenged. Prakash, the complainant, did not express any suspicion or pre-existing enmity toward anyone, which *prima facie* indicates a lack of direct motive connected to the incident.

11. Finally, the alleged motive stemming from an event in 2012, *prima facie* appears speculative and distant in time. While revenge might be a potential motive, it is *prima facie* difficult to conclusively establish this, especially when the key witnesses only came forward a year after the crime.

12. Having considered the material available on record; the arguments advanced by counsel for the applicants particularly the facts narrated above and the fact that trial is likely to take its own considerable time and taking note of all these aspects, I do not



intend to go into the merits of the matter but of the considered view that no useful purpose would be served by keeping the applicants in detention for an indefinite period therefore, I am inclined to grant indulgence of bail to the petitioners at this stage.

13. Consequently, the present bail application is allowed and it is directed that the accused-petitioners (1) **Mahesh Kumar S/o Late Bhagwana Ram** and (2) **Nagji Ram @ Nagji S/o Late Ganesha Ram**, arrested in connection with the F.I.R. No. 268/2023, registered at Police Station Sanchore, District Jalore, shall be released on bail provided each of them furnishes a personal bond and two surety bonds of sufficient amount to the satisfaction of the learned trial court with the stipulation to appear before that Court on all dates of hearing and as and when called upon to do so. This order is subject to the condition that accused, within 7 days of their release, and sureties on the day of furnishing bail, will also furnish details of their all bank accounts, with bank and branch name, in shape of an affidavit, and submit legible copy of their Aadhar cards as well as copy of front page of Bank pass book, for smooth recovery of penalty amount, if there arise a need for recovery of penalty under Section 446 Cr.P.C in future.

(RAJENDRA PRAKASH SONI),J

Mohan/-