

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-32882 of 2015

DATE OF DECISION: 18.12.2015

Ankit @ Gaurti

.....Petitioner

Versus

State of Haryana

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspaper may be allowed to see judgment? (Yes/No)**
2. **To be referred to reporters or not? (Yes/No)**
3. **Whether the judgment should be reported in the Digest? (Yes/No)**

Present:- Mr. Arvind Singh, Advocate
for the petitioner.

Mr. Vikas Malik, DAG, Haryana.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No. 34 dated 3.5.2015 registered under Sections 302,148,149,120-B IPC at Police Station Titram, District Kaithal, during pendency of the trial.

Learned counsel for the petitioner contends that the petitioner has falsely been implicated in this case as neither he has been named in the FIR nor any overt act has been attributed to him. The petitioner has been implicated in this case only on the basis of disclosure statement made by co-accused. Nothing has been recovered from the petitioner even after recording of the disclosure statement of the co-accused. He further submits that there is no evidence even to connect the petitioner with

the alleged conspiracy. The disclosure statement recorded by the police is not only contradictory but contrary to the statement of the complainant as he has only named five persons with specific roles. Learned counsel further submits that the petitioner is in custody since 4.6.2015 and only the challan has been presented in the case. Nothing is to be recovered from the petitioner and no purpose would be served by keeping him behind the bars.

Learned counsel for the respondent-State opposes grant of bail to the petitioner on the ground of seriousness of offence but does not dispute the custody period as well as the fact that nothing has been recovered from him.

Heard the arguments advanced by learned counsel for the petitioner as well as State and have also gone through the allegations in the FIR and other documents attached with the challan.

Admittedly, the FIR was registered on the basis of statement of complainant-Bhira Ram against five persons. It is also not disputed that the name of the petitioner has come in the disclosure statement of co-accused during investigation. It is also an admitted case of the prosecution that no recovery has been effected from the petitioner even after disclosure statement. As per first disclosure statement of co-accused Suresh @ Sesa recorded on 5.5.2015, the petitioner was one of the accused but in the second disclosure statement, he has stated that the petitioner has left the place prior to the occurrence. He has also stated that the petitioner was having no role in causing injury to deceased-Ishwar or in catching hold of him. However, other co-accused, namely, Vikram @ Dela, Joga Singh and Dinesh @ Nishu have stated in their respective disclosure statements that the petitioner was one of the assailants. It has been stated that at the time of occurrence, the petitioner has raised lalkara but subsequently he left the

place in a private car by giving signal to other accused as he was having test for recruitment in BSF on that very day. It is apparent from the disclosure statements of accused that there is no consistency in the statements of all the accused persons. Moreover, the disclosure statements does not amount to confession in case the same is recorded by the police as it is not admissible under Sections 25/27 of the Indian Evidence Act. Even no recovery was effected on the basis of disclosure statement. Nothing has come on record during investigation that the petitioner was involved in the conspiracy. He has been made accused only on the basis of disclosure statement, which is not permissible under law. The petitioner is in custody since 4.6.2015 and challan has already been presented. Nothing is to be recovered from the petitioner and no purpose would be served by keeping him behind the bars.

Accordingly, the present petition is allowed and petitioner-Ankit @ Gaurti is directed to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of trial Court.

However, the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case during trial.

December 18, 2015
pooja

(DAYA CHAUDHARY)
JUDGE