

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 204

Criminal Miscellaneous No.M-23872 of 2016 (O & M)
Date of Decision: August 10, 2016

Dharmender

..... PETITIONER

VERSUS

State of Haryana

..... RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Mr. Sunil K. Nehra, Advocate, for the petitioner.

Mr. Tanuj Sharma, Assistant Advocate Genera, Haryana.

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Jaspal Singh, J

1. The instant petition has been preferred under Section 438 Cr.P.C. by Dharmender for pre-arrest bail, feeling apprehension of his arrest in case FIR No.62 dated January 31, 2015, under Sections 395, 397, 342, 212, 412, 120-B IPC and Section 25 of the Arms Act, registered at Police Station, City, Jagadhri, District Yamuna Nagar.

2. The contention of learned counsel for the petitioner is that name of petitioner does not figure in the FIR. He has been falsely implicated in the instant case at the instant of his co-accused. Otherwise, neither he participated in the commission of any robbery nor has he got any concern with his alleged co-accused. Moreover, as per the FIR, unknown persons

otherwise, if any disclosure statement has been suffered by either Mehtab @ Kaana @ Jiva or Sabir, no liability can be fastened upon the petitioner. Even otherwise, the statements allegedly suffered by them are inadmissible in evidence. Petitioner is ready to join investigation and to abide by all the terms & conditions imposed upon him, in case, he is granted the concession of pre-arrest bail.

3. On the other hand, learned State counsel has strongly opposed the instant petition submitting that there are serious and specific allegations against the petitioner that after the co-accused of petitioner committed robbery and decamped jewelry and cash from the shop of complainant. It was handed over to petitioner and for that purpose, some amount was also given to him for retention of robbed articles. The robbed articles are required to be recovered which is only possible through custodial interrogation. Thus, he does not deserve the concession of pre arrest bail.

4. This court has given an anxious thought to the rival submissions made by learned counsel for the parties and perused the record.

5. As per the case of prosecution, dacoity of huge amount of ornaments from a jewelry shop of Rakesh Sethi (complainant) was committed. No doubt, petitioner is not named in the FIR. It does not mean that he has no concern with the instant occurrence. During investigation of the case, co-accused of petitioner namely Mehtab @ Kaana @ Jiva was arrested. When he was subjected to custodial interrogation, he suffered disclosure statement on March 17, 2015 to the effect that some of the robbed ornaments were kept by him in the house of petitioner for the purpose of sale/disposal thereof. Similarly, Sabir, another co-accused of petitioner, also suffered similar disclosure statement. After nomination of the petitioner,

huge quantity of gold and silver ornaments is involved and further that gold and silver ornaments were allegedly kept with petitioner at his house for safe custody thereof, its recovery is required to be effected. Otherwise also, custodial interrogation of the petitioner is likely to unearth various ramifications involved in this case. Similarly, his custodial interrogation is also essential for the recovery of alleged gold and silver ornaments which were allegedly handed over to him by his co-accused after commission of alleged dacoity.

6. Taking into consideration the aforesaid aspects of the case but without expressing any opinion on merits of the case, this court does not find it a fit case to exercise discretion envisaged under Section 438 Cr.P.C.

7. Accordingly, the instant petition stands dismissed.

August 10, 2016
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No