

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

CRL. MISC. No.M-15268 OF 2017
DATE OF DECISION : 8th AUGUST, 2017

Rajan

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. Jarnail S. Saneta, Advocate for the petitioner.

Ms. Tanushree Gupta, DAG, Haryana.

Mr. Ramandeep Sandhu, Sr. D.A.G. Punjab.

Mr. Sukant Gupta, APP, U.T. Chandigarh.

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A. B. CHAUDHARI, J. (ORAL)

The petitioner has filed the present petition under Section 439 Cr.P.C. seeking regular bail in FIR No.35 dated 27.01.2017 registered under Sections 328 & 379 IPC at Police Station Butana, District Karnal.

Heard learned counsel for the rival parties.

Copy of depositions placed on record by the State counsel are taken on record.

Learned State counsel submits that the complainant has been examined before the trial Court.

Looking to the nature of offence and the fact that only two witnesses remained to be examined, I think, that the petitioner would be entitled to grant of bail.

Pursuant to order dated 08.05.2017 passed by this Court, Mr. Sukant Gupta, APP for U.T. Chandigarh submits that the District Attorneys have been appointed in UT Chandigarh. Counsel to take fresh instructions regarding this.

Affidavit of Additional Secretary Home, Chandigarh filed by the learned APP is taken on record.

Mr. Sukant Gupta, submits that in UT Chandigarh as well as in both the States of Punjab and Haryana in accordance with the Punjab and Haryana High Court Rules and Orders, recording of dying declaration as per the provisions in Chapter 13-A, is required to be made by Judicial Magistrate First Class only and no other magistrate.

Similarly he points out the provisions in Chapter 11 relating to holding of Test Identification Parade (TI Parade) and submits that the Judicial Magistrate First Class will have to conduct the TI Parade.

The provisions regarding dying declaration were brought in to existence on 26.05.1966 while the provisions in relation to the TI Parade were incorporated on 19.12.1936.

The Code of Criminal Procedure 1973 (Cr.P.C.) was materially amended and it has provided for various types of Magistrates. Section 21 Cr.P.C. provides for appointments of Special Executive Magistrates, who are not necessarily the Government Servants or some time also Government Servants. In my opinion, looking to the workload on the Judicial Magistrates, the States of Punjab and Haryana as well as the UT Chandigarh may take resort to appoint the Executive Magistrates, Special Executive Magistrates for the purposes of recording of dying declarations and holding of TI Parades. The reason is that the judicial

Magistrates may not be able to give time from their regular work to perform these ancillary functions. The Advocate General, Punjab and Advocate General, Haryana and the APP for UT Chandigarh are requested to assist this Court as to the issue that is being projected by this Court, which is of immense importance.

In that view of the matter, without commenting anything on merits of the case, I am inclined to grant bail to the petitioner. Hence, I make the following order:

ORDER

- (i) CRL. MISC. No.M-15268 OF 2017 is allowed.
- (ii) The petitioner be released on bail to the satisfaction of the concerned CJM/Duty Magistrate.

Copy of this order be supplied to the learned State counsels under the signatures of Bench Secretary.

Put up on 22.08.2017.

8th AUGUST, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned: *Yes* *No*

Whether Reportable: *Yes* *No*