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

CRM-M-39527 of 2016

Date of decision: March 21, 2017

Vikas

.....Petitioner

Versus

State of Haryana

.....Respondent

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

Present: Mr. Rakesh Nehra, Advocate for the petitioner.

Ms. Tanushree Gupta, DAG Haryana.

A.B. CHAUDHARI, J (Oral)

Heard learned counsel for the rival parties.

In FIR No.60 dated 24.01.2014, under Sections 302, 148, 149, 120-B, 216 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 25, 54, 59 of the Arms Act, 1959, registered at Police Station Civil Lines, Hisar, District Hisar, the petitioner seeks regular bail. Petitioner was arrested 02.06.2014 and is in jail since then.

In FIR in question, the petitioner was granted bail in bail application No.3 by the learned trial Court vide order dated 05.02.2015 for the reasons mentioned in the said order. I quote following paragraphs of the said order as under:-

“4. In reply of the police in para no.4, it is admitted that presence accused has been arrested for the offence u/s 25 of Arms Act only. The challan has already been presented in the court. It has also been mentioned that present accused is in custody since 02.06.2014.

5. *Ld. Public Prosecutor fairly admitted that the present accused is involved under Section 25 of Arms Act only.*

6. *Therefore, after considering the totality of the facts and circumstances of the present case and the fact that allegations against present accused are under Arms Act only, application for bail is allowed and applicant is admitted to bail subject to furnishing bail bond in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of this Court. Papers of this bail application be tagged with the main case file.”*

Perusal of the above paragraphs show that there is no allegation about 302 or 120-B IPC against the petitioner. Thereafter, on 12.09.2016, the trial Court framed charge against the petitioner and as contended by the learned counsel for the petitioner, the petitioner was taken into custody on the same date since the charge under Section 302, 120-B IPC was framed.

I have perused the said order framing charge. Learned counsel for the petitioner states that the petitioner applied for grant of regular bail. Learned trial Court vide order dated 14.10.2016, has given reasons for rejecting the petition for regular bail. I quote following paras which read thus:-

“6. I have also gone through the case file and order of framing of the charge against the accused dated 12.09.2016. From the case file, it is revealed that this accused has been charge sheeted for main offence u/s 302 IPC read with section 120B IPC. Therefore, to contend that the accused applicant is facing trial for the charges of keeping in his possession weapon cannot be accepted.

7. *Since accused has been charge-sheeted for major offences, therefore, in my considered opinion at present he is not entitled to concession of bail. Resultantly, the bail application in hand stands dismissed. Papers be tagged with main file.”*

Looking to the above, in the absence of positive evidence discussed by the trial Court and in the wake of the earlier order passed by the learned trial Court, there appears to be, prima-facie, absence of any culpability of the petitioner with material evidence.

In that view of the matter, this petition is allowed. Petitioner is ordered to be released on bail, subject to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned. The petitioner shall not tamper, influence and threaten the prosecution witnesses and complainant as well.

(A.B. CHAUDHARI)
JUDGE

March 21, 2017

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No