

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

CRM-M No.26212 of 2018

Date of decision : 03.07.2018

Sunny

.....Petitioner

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Mr. Ashish Sanghi, D.A.G., Haryana.

* * *

DAYA CHAUDHARY, J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case FIR No.154 dated 15.12.2017 under Sections 397B/120B/34 IPC and Section 25/54/59 of the Arms Act at Police Station Bapoli, Distt. Panipat (Annexure P-1).

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas he is not involved in the offence as alleged in the FIR. He has been implicated in the case only on the basis of disclosure statement of the co-accused. Neither the name of the petitioner is mentioned in the FIR nor any identification was conducted. The

prosecution version is based upon the disclosure/confessional statement made by co-accused while in police custody. At the time of recording of the confessional statement, neither any independent witness was there nor it was made before Magistrate and it does not carry any weight in the eyes of law. Such like statement cannot be relied upon in view of the provisions of Section 26 of the Indian Evidence Act. Learned counsel also submits that the petitioner is behind the bars since 05.01.2018 and no recovery is to be effected from him. He is not required for further custodial interrogation as investigation has already been concluded. The bail application filed by petitioner has been dismissed only on the ground that challan has been presented before the Illaqa Magistrate but the same has not been committed to the Court of Sessions. Even the second bail application was dismissed on the ground that charge has been framed but still none of the witnesses has been examined. The case of the petitioner is at par with co-accused Sanspal alias Sansa, who filed CRM No.20430 of 2018, which has been allowed by this Court vide order dated 31.05.2018.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner but he has not disputed the custody period and parity with co-accused Sanspal alias Sansa, who has been released on regular bail.

Heard arguments of learned counsel for the petitioner as well as learned State counsel.

Admittedly, investigation of the case has been concluded and petitioner has been involved in the case only on the basis of

disclosure/confessional statement made by co-accused. It is also admitted that name of the petitioner is not mentioned in the FIR. As per the disclosure statement made by co-accused Sanjay alias Bhoora before the police, the crime has been committed by Sanjay alias Bhoora and his friend Shankar, which clearly shows that the present petitioner has not participated in the incident directly. Even from the disclosure statement, it comes out that crime has been committed on the instructions of Sanspal alias Sansa. There is no other connecting evidence showing the participation of the petitioner but only on the basis of disclosure statement he has been implicated. Co-accused Sanspal alias Sansa has been released on regular bail by this Court vide order dated 31.05.2018. Challan has been presented. The trial may take long time to conclude. Petitioner is in custody since 05.01.2018 and no purpose would be served by keeping him in custody.

Accordingly, present petition is allowed and the petitioner is directed to be released on regular bail on furnishing bail bonds/surety bonds to the satisfaction of the trial Court, subject to the following conditions:

1. that the petitioner shall appear in the Court on each and every date of hearing;
2. that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and
3. that the petitioner shall not leave India without the prior permission of the Court and shall surrender his passport, if he

has got one, otherwise to furnish affidavit in that regard.

03.07.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No