

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-38745-2018

Date of decision: 11.09.2018

Rajbir Singh

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. P.S. Poonia, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.25 dated 18.02.2006 under Sections 15, 16, 61, 85 of NDPS Act, registered at Police Station Loharu, District Bhiwani.

Learned counsel for the petitioner submits that as per allegations in the FIR registered on 18.02.2006, Inspector Dharamvir Singh, CIA, Loharu along with ASI Mahender Singh, HC Sajjan Singh No.677, HC Net Ram No.237, HC Dan Singh No.218 and EHC Rajender Singh No.456 were present at the bus stand Village Gaggarwas in Govt. Gypsy No.HR-16C-7330 driven by Constable Raj Kumar No.410 for patrolling and checking duty. A vehicle make MAX of white colour was seen coming from Village Gaggarwas and the police party signaled to stop. The driver stopped the aforesaid vehicle 20-25 paces before and tried to take the turn back, then the vehicle was stopped being plunged into katcha portion of the land. Driver of the vehicle and his

accomplice sitting with him jumped from the vehicle and ran away. Co-accused Rambir was identified by Constable Raj Kumar No.410 and the petitioner was referred to as unidentified person. It is further submitted that as per the averments in the FIR, none of the accused was arrested at the spot. Thereafter, the Additional Sessions Judge, Bhiwani proceeded under Section 299 Cr.P.C. and recorded statements of two witnesses namely Constable Raj Kumar No.410 and ASI Mahender Singh (since retired) and record of the case was consigned. Learned counsel further submits that later on, co-accused Rambir was arrested and on his disclosure statement, name of the petitioner surfaced.

Learned counsel for the petitioner has further submitted that though in the challan presented against the petitioner under Section 173 Cr.P.C., it is stated that the petitioner was identified by one Ram Kumar, Numberdar, resident of Village Singhani, however, this witness died on 21.08.2007 and his statement was never recorded in the proceedings under Section 299 Cr.P.C., which were concluded on 19.03.2007. It is thus submitted that the police has submitted the report under Section 173 Cr.P.C. on a wrong noting that the petitioner was identified by Ram Kumar, Numberdar, who died in the year 2007, therefore, it will be a debatable issue whether identity of the petitioner is established in the case or not. It is further submitted that the petitioner is in judicial custody since 28.04.2018, when he was arrested in FIR registered under Section 174-A IPC, pursuant to the order declaring him proclaimed offender in the present case and he is not involved in any other case.

Learned State counsel, on instructions from ASI Rajpal, has however submitted that after the arrest of Rambir, he had faced the full length trial and the trial Court, while relying upon the statement of aforesaid Constable

Raj Kumar, who had identified said accused Rambir in the proceedings under Section 299 Cr.P.C., has convicted him vide judgment dated 10.11.2016 (Annexure P-1) and sentenced to undergo R.I. for 15 years with fine of Rs.2,00,000/-. It was held that accused Rambir was the owner and driver of vehicle bearing registration No.HR-61-4321, from whom the recovery was effected though the aforesaid Constable Raj Kumar had died before recording his statement during the trial.

After hearing learned counsel for the parties, without commenting anything further on merits of the case and considering the fact that it will be a debatable issue whether identity of the petitioner is proved or not; the petitioner is in judicial custody for the last more than 04 months; he is not involved in any other case and also in view of the fact that the FIR pertains to the year 2006, whereas the petitioner was arrested in the year 2018, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail bond with two sureties of like amount and on imposition of any other condition, to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

11.09.2018

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No