

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

CRM-M No. 42097 of 2018

Date of decision : 23.10.2018

Azmal Khan

.....Petitioner

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. A. P. S. Shergill, Advocate for the petitioner.

Mr. D. K. Mittal, DAG, Haryana.

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DAYA CHAUDHARY, J.

Petitioner Azmal Khan has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to him in case FIR No.45 dated 18.01.2011 under Sections 396, 216, 420, 120-B, 412, 201 of the Indian Penal Code, 1860 and Sections 25 of the Arms Act, 1959 registered at Police Station – Ratia, Distt. Fatehabad, during pendency of the trial.

Learned counsel for the petitioner submits that the petitioner does not have any criminal background as there is no other case against him except the present one. He is in custody for the last more than 7 years and 9 months as he was arrested on 23.01.2011. Prosecution evidence has already been closed and still the trial is pending because of pendency of the Civil Revision Petition. Even as per the allegations in the FIR, the present

petitioner was not present at the place of occurrence and no role or overt act has been attributed to him. The complainant, who is an eye witness of the alleged occurrence, has been examined and cross-examined but no evidence has come to show the involvement of the petitioner in the commission of the alleged offence. The petitioner has been implicated on the basis of confessional statement of the co-accused before the police but there is no corroboration to the same. No evidence has been collected by the investigating agency to prove the involvement of the petitioner in any manner. As per the provisions envisaged under Sections 24, 25, 26 and 27 of the Indian Evidence Act, there is no evidentiary value of the confessional statement made by co-accused. Co-accused namely Naib Singh alias Naseeb has been released on regular bail vide order dated 10.07.2015 passed in CRM-M No.21389 of 2015. Learned counsel also submits that name of the petitioner was not mentioned in the FIR and he was arrested without ascertaining the veracity of the allegations. The alleged car which has been shown to be involved in the commission of offence was stolen on 18.01.2011 and when the petitioner failed to find out the same, he lodged a complaint at Police Station Kerana, Distt. Muzaffarnagar (U.P.) and in this regard, DDR No.29 of 2011 was also recorded on 19.01.2011. Said stolen car was used in the commission of offence by the co-accused and name of the petitioner has been mentioned because of use of the car in the commission of offence. Not only the prosecution evidence has been closed, but the statements of accused under Section 313 Cr.P.C. have also been recorded. No purpose would be served by keeping the petitioner in custody.

Main accused namely Shishpal has been released on regular bail by the Hon'ble Apex Court vide order dated 24.08.2018 passed in SLP (Crl.) No.3530 of 2018.

Learned State counsel has not disputed the period of custody undergone by the petitioner as well as other submissions made by learned counsel for the petitioner.

Heard arguments of learned counsel for the parties and have also perused the contents of the FIR and other documents on the file.

Without commenting anything on the merits of the case and by considering the submissions made by learned counsel for the petitioner and the period of custody undergone by the petitioner which is more than 7 years and 9 months and also the fact that main accused namely Shishpal has been released on regular bail, the present petition is allowed and the petitioner is directed to be released on regular bail on furnishing adequate bail/surety bonds to the satisfaction of the trial Court.

23.10.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No