

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-53531-2018

DATE OF DECISION: JANUARY 29, 2019

DESRAJ @ DESU

...PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. MANISH SONI, ADVOCATE FOR THE PETITIONER.
MR. ANMOL MALIK, AAG, HARYANA.

MANOJ BAJAJ, J.(ORAL)

Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.630 dated 21.10.2018 under Sections 398/401 IPC, registered at Police Station Shivaji Colony, District Rohtak, during pendency of the trial.

It is contended by learned counsel for the petitioner that the alleged offence punishable under Section 398 IPC is not made out, as no property of the complainant was taken away and therefore, at best, it is just a preparation. Learned counsel for the petitioner has relied upon the judgements of Hon'ble Supreme Court in Chinnadurai vs. State of T.N., 1996 AIR (SC) 546 and Hon'ble Delhi High Court in Swaran Singh vs. State, 2011(4) RCR(Criminal) 134.

The argument of the learned counsel for the petitioner is misplaced as the FIR itself clearly mentions that a secret information was received that four armed young persons are sitting in a car looking for an occasion to loot the passer-by. Acting upon this information, ASI alongwith

other officials reached the double bridge of Karontha-Baland river in a Government vehicle, where the young boys alighted from the car and came suddenly in front of the vehicle. Two of the persons were having pistols in their hand, one was having wooden stick and another was having a lit torch in his hand. The boys after pointing out the pistol said if you love your life then remove all your belongings and hand over to us. At this stage, ASI removed covering of the clothes and shouted to nab those accused who tried to escape. However, later they were overpowered and arrested. Recoveries were effected from those accused.

It is evident that to constitute an offence under Section 398 IPC, attempt is key ingredient. The judgements relied upon by the learned counsel for the petitioner are not applicable in the set of facts of the present case, as in the cited cases, the assailants had entered the house and left after scattering the articles, without taking away anything. Besides, these judgements were passed after examining the evidence of the prosecution whereas, in this case, the evidence is yet to be recorded.

Learned State counsel submits that challan already stands filed.

Considering the alleged role of the petitioner in the crime and the fact that the trial is yet to commence, no ground is made out for grant of bail, at this stage. Nothing mentioned herein shall have any bearing upon the merits of the trial.

Petition stands dismissed.

January 29, 2019
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No
Whether Speaking/Reasoned : Yes/No