

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28977-2020

Date of Decision: 14.10.2020

Aaslam @ Akshay

...Petitioner

vs.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Punit Malik, Advocate for the petitioner.

Mr. Surender Singh, Asstt. AG, Haryana.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to the outbreak of pandemic Covid-19.
2. Prayer in the petition under Section 439 Cr.P.C., is for grant of regular bail to the petitioner during pendency of trial in case FIR No.319 dated 11.08.2016, registered under Sections 395 and 397IPC, at Police Station Pataudi, District Gurugram.
3. Learned counsel contends that the petitioner was neither identified by the complainant nor was any test identification parade conducted and he was implicated in the instant case solely on the basis of his alleged confession while in police custody. Learned counsel contends that in the circumstances, the basis for implication in the instant case i.e. alleged confession made by the petitioner while in police custody is hit by Section 26 of the Indian Evidence Act, 1872. Learned counsel further contends that the petitioner has been in custody since 08.09.2016, no incriminating material was recovered from the petitioner, except for Rs.1500/-, charges were framed on 13.02.2017 and out of 30 prosecution witnesses, 22 had been examined but since March, 2020, the

before the learned trial Court is 22.12.2020, therefore, no useful purpose would be served by keeping the petitioner in custody. Reference in this connection is made to the decision of Hon'ble the Supreme Court in **Sanjay Chandra Vs. CBI, Criminal Appeal No.2178 of 2011.**

4. Learned Asstt. AG, Haryana, on instructions from, ASI Satish Kumar, has not disputed the aforementioned factual position including the implication of the petitioner on the basis of his alleged confession while in police custody.

5. I have considered the submission of learned counsel for the parties.

6. Admittedly confession made by an accused while in police custody cannot be held against him in view of Section 26 of the Indian Evidence Act 1872, besides the petitioner has been in custody since the past more than four years, trial is not progressing due to circumstances prevailing on account of Covid-19 pandemic although the case is now fixed for 22.12.2020. Therefore, no useful purpose would be served by keeping the petitioner in custody. Accordingly, the petition for regular bail is allowed and the petitioner is ordered to be released on regular bail during the pendency of trial provided he is not required in any other case and subject to his furnishing adequate bail/surety bonds to the satisfaction of the learned CJM/Trial Court/Duty Magistrate, concerned besides subject to the following conditions :

i) Petitioner shall remain present before the trial Court on each and every date fixed for the hearing of the case ;

ii) Petitioner shall mark his attendance in the concerned police station having jurisdiction over his place of residence once a week.

iii) Petitioner would not commit similar offence while on bail.

7. Nothing stated hereinabove would be construed as an expression of opinion on the merits of the case. It is also made clear that the prosecution would be at liberty to move an application for modification / recall of order of bail, if the petitioner violates any of the conditions imposed by this Court.

(B.S. Walia)
Judge

14.10.2020

'Amit-Rajesh'

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No