IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-6412-2021
Date of decision:-28.6.2021

Umesh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sushil Sheoran, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

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H.S. MADAAN, J.

Case taken up through video conferencing.

This petition for regular bail has been filed by petitioner – Umesh, aged 26 years, resident of Dubaldhan, Tehsil Beri, District Jhajjar, an accused in FIR No.222 dated 19.8.2016, under Sections 147, 148, 201, 307, 323, 342 IPC and Section 25 of Arms Act, registered with Police Station Julana, District Jind.

In nutshell, the prosecution story is that on 19.8.2016 at about 11:20 before noon, Sahil son of Satpal, a student of B.A. Ist year of Government College, Julana along with four other boys duly armed with dandas and firearms gave merciless beatings to Sandeep @ MC and they had fired upon him with an intention to kill him. The incident was caught

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in CCTV footage. The Principal of the college had submitted a written complaint to the police, which formed basis for registration of formal FIR. The investigation in the case started. On 2.10.2016, accused Deepak Lather was arrested in this case. He got recovered a wooden BINDA used by him in the incident. On 7.10.2016, accused Sahil was arrested in this case and he also got recovered a wooden BINDA from his possession. On 7.11.2016, accused Arun was arrested. On 23.2.2017, accused Vikas, who was in custody in another criminal case was joined in the investigation and formally arrested in this case. He disclosed that during scuffle, the pistol used in the incident had fallen down at the spot, which had been seized by the police. On 3.4.2017, accused Sumit, who was also in custody in some other criminal case was made to join the investigation in this case. He admitted his involvement in the incident stating that the firearm used by him in the commission of the offence had been thrown away by him at some unknown place in U.P.. The present petitioner Umesh, who was in judicial custody in FIR No.27 dated 15.4.2017 for the offences under Sections 186, 353, 307 IPC and 25 & 27 of Arms Act, registered with Police Station Special Cell, Lodhi Colony, Delhi was brought on production warrants by the local police and made to join the investigation. He disclosed that he had used .32 bore pistol in the incident, which had been recovered from him by Special Cell of Delhi Police – Rohini. He had identified and demarcated the place of incident. On conclusion of the investigation, the challan has been filed in this case and trial is pending. The petitioner/accused had filed application for regular bail in the Court of Sessions, which was assigned to Additional Sessions

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Judge, Jind, who vide order dated 19.6.2020 had dismissed the said application. As such, the petitioner has approached this Court with the same request.

Notice of the petition was given to respondent – State and counsel representing the State has put in appearance.

I have heard learned counsel for the parties besides going through the record and I find that the petition is bound to fail.

Learned counsel for the petitioner has stated that the petitioner is not named in the FIR and even name of the injured is not given therein. However, one wonders what benefit learned counsel for the petitioner wants to derive by putting forward such argument.

The FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often lodged in hurry and it may not contain the minute and precise details of the incident. The FIR can be got registered by a person, who may not be an eye-witness of the same. It is only during investigation of the case that police can come to know about the culprit/criminal, who had committed the crime. Merely for the reason that accused is not named in the FIR does not result in causing any dent in the prosecution story.

During the course of investigation the involvement of the petitioner in the incident was found to be there and as disclosed by him to the police, the weapon used by him in the incident had been recovered from him by Delhi Police in another criminal case.

As regards name of the injured being not mentioned in the FIR, the FIR was lodged by Principal of the college since incident had

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taken place in the premises of that college. The Principal of the college is not supposed to know each and every student studying in the college, therefore his not mentioning the names of all the assailants and the injured in the written complaint submitted by him to the police does not make much difference.

With regard to other argument put forward by learned counsel for the petitioner that petitioner is behind bars since long having been arrested in this case on 9.5.2017 and the trial is likely to take considerable time for its completion and further that some of the co-accused namely Deepak Lather, Sumit, Vikas Sahil and Ombir are on bail in this case do not held the petitioner/accused much; as it appears from the record keeping in view the fact that only one culprit was named in the FIR and names of other participants in the crime were not there and even the victim was not named, it took investigating agency considerable time to find out as to how the incident had taken place, the part played by each of the accused etc. Furthermore, due to unprecedented situation of outbreak of Covid-19 working in the Courts has been adversely affected for the last more than one year. It needs to be taken note of that petitioner/accused comes out to be a habitual criminal. The details of the cases in which he is involved along with the stage as has been given by the State in its reply is being reproduced for ready reference:

Sr.No.	FIR No.	Dated	Under Sections	Name of Police Station	Remarks
1.	149	14.7.2010	379 IPC	Kalanaur	Convicted and sentenced to undergone vide order dated

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					11.12.2013
2.	47	11.3.2011	25 of Arms Act	Beri	---
3.	117	20.4.12	337 IPC 25 Arms Act	Beri	Acquitted on 5.1.2015
4.	73	15.3.13	307, 34 IPC, 25 Arms Act	Beri	Acquitted on 22.3.2015
5.	1.	8.1.2014	452, 506 IPC, 25 Arms Act	Beri	Acquitted on 7.1.2019
6.	193	23.2.2014	174-A IPC	City Dadri	Convicted and sentenced to undergone vide order dated 4.7.14
7.	462	25.5.15	25 Arms Act	Jhajjar	Convicted and sentenced to undergone vide order dated 12.9.18
8.	253	2016	307 IPC	Beri	Convicted on 26.8.19
9.	629	2016	302, 34 IPC, 25 Arms Act	Mukharji Nagar, Delhi	Pending trial
10.	27	15.4.17	186, 353, 307 IPC, 25 of Arms Act	Special Cell, Sector-6, Rohini	Pending trial

Thus involvement of the petitioner in 10 criminal cases is there, out of them he is shown to be convicted in four cases and standing trial in three cases, though acquitted in three cases. As such, he has been booked in criminal case on the allegations of committing heinous crime.

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With such type of criminal record, there is every possibility of petitioner trying to abscond so as to delay the proceedings in the trial Court and further to influence the prosecution witnesses, if released on bail. Some of the co-accused having been granted concession of bail does not mean that petitioner is entitled to bail also on the ground of parity. The Court is to consider various factors while deciding whether the accused is entitled to bail or not. Such factors include the past criminal record of an accused i.e. number of cases in which he is involved, number of cases in which he has been convicted, the nature of cases in which he is facing trial or has been convicted, the chances of his absconding and delaying the trial, if granted concession of bail, the apprehension of his threatening the prosecution witnesses or giving any inducement to them etc. The role played by each culprit is also to be considered. Therefore, merely for the reason that the proceedings in the trial Court have not been concluded so far and that some of the co-accused of the present petitioner have been granted regular bail does not make out any case for grant of concession of regular bail to the petitioner.

Thus keeping in view the detailed discussion above, I find that the petition is doomed for failure and is dismissed accordingly.

It may be mentioned here that nothing discussed hereinabove shall have any bearing on the merits of the case.

28.6.2021 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

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