

222 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-23046-2021
Date of decision: 25.10.2021

Sagar alias Susha Petitioner

Versus

State of Haryana Respondent

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

Present: Mr. Manvender Rathee, Advocate for the petitioner.
Mr. Vishal Malik, DAG, Haryana.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.
2. Prayer in the petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.27 dated 06.02.2021, registered under Sections 307, 392, 458, 342, 120-B of IPC, 1860 and Sections 25/54/59 Arms Act, at Police Station Dujana, District Jhajjar.
3. Learned counsel contends that the petitioner who is a young man of 21 years, has been implicated in the case solely on the basis of disclosure statement made by co-accused, Manjit, as per the allegations in the FIR, none of the accused were identified by the complainant, the petitioner is residing at a distance of 100 meters from the house of the complainant, therefore, it is not possible that if he was one of the assailants, the complainant would not recognize him, the petitioner has been falsely implicated in the case solely on account of alleged dispute between him and the complainant on account of the complainant teasing the petitioner's sister, the pistol used in the commission of the offence does not belong to the

petitioner but co-accused Amit, no injury was caused to the complainant and the bullet alleged to have been fired in the incident hit a wall, the petitioner has been in custody since 27.04.2021, he does not have any criminal antecedents except for the instant case registered against him besides no recovery is to be effected from him, challan has been presented on 20.08.2021, trial would take considerable period of time as charges have yet to be framed, therefore, no useful purpose would be served by keeping the petitioner behind bars.

4. Learned DAG, Haryana, concedes that the petitioner has been implicated in the instant case solely on the basis of disclosure statement of co-accused, Manjit and as also confession made by the petitioner while in police custody and that apart from the disclosure statement of co-accused and confessional statement of the petitioner while in police custody, there is no other material to connect the petitioner with the commission of the offence. Learned DAG also admits that no injury was caused to the complainant, the gun from which the shot was allegedly fired does not belong to the petitioner but to co-accused Amit alias Babbar, no injury is attributed to the petitioner and other accused and the bullet allegedly fired from the pistol get embedded in the wall, the pistol had been recovered from co-accused, Amit alias Babbar besides gold chain allegedly snatched from the neck of the complainant was also recovered from co-accused Amit alias Babbar, challan has been presented on 20.08.2021 and the petitioner is in custody since 27.04.2021.

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

6. Admittedly the petitioner has been implicated in the instant case solely on the basis of disclosure statement of co accused Manjit as well as

confessional statement made by him while in police custody, however, none of the accused were identified by the complainant, although the petitioner is stated to be residing 100 meters away from the house of the complainant, there is no material to connect the petitioner with the commission of the offence, apart from the disclosure statement of co-accused as well as confessional statement made by him while in police custody, the petitioner is a young man and is in custody since 27.4.2021, challan has been presented on 20.8.2021, trial is likely to take considerable period of time, therefore, I am of the considered view that no useful purpose would be served by keeping the petitioner in custody. Reference is made to the decision of Hon'ble the Supreme Court in **Haricharan Kurmi versus State of Bihar', 1964 AIR (SC) 1184**. Relevant extract of the decision in Haricharan Kurmi's case (supra) is reproduced as under:-

“.....Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30.....”

Resultantly, the petition for regular bail is allowed and the

petitioner is ordered to be released on regular bail during the pendency of the trial, subject to his furnishing bail / surety bonds to the satisfaction of the learned CJM / Trial Court / Duty Magistrate, concerned, provided he is not required in any other case. It is also made clear that the petitioner shall appear before the learned trial Court on each and every date and shall also abide by the conditions contained in Section 437 (3) Cr.P.C. Needless to mention, in case of violation of either of the conditions or involvement of the petitioner in any other case while he is on regular bail in the instant case, the prosecution would be at liberty to move an application for cancellation of bail granted to the petitioner in the instant case. However, nothing stated hereinabove shall be construed to be an expression of opinion on the merits of the case.

8. Petition allowed in the aforementioned terms.

(B.S. Walia)
Judge

25.10.2021
rajesh-gsv

1. *Whether speaking/reasoned:* Yes/No.
2. *Whether reportable:* Yes/No.