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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.41413 of 2020
Date of Decision: 08.10.2021

MALKIAT SINGH @ SADHU

.....Petitioner

Vs

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Chandan Singh Rana, Advocate
for the petitioner.

Mr. H.S. Sullar, D.A.G., Punjab.

RAJ MOHAN SINGH, J.(Oral)

Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.83 dated 11.05.2019 registered under Sections 395, 427, 342 IPC (Act No.45 of Year 1860) and 25 of the Arms Act (Act No.54 of 1959) at Police Station City Sidhwan Bet, Distt. Ludhiana.

FIR was registered at the instance of Harmandeep Singh with the allegations that he was posted as a security guard in the ATM of ICICI Bank, Branch Kishanpura Chowk, Sidhwan Bet. He was on duty on 11.05.2019 from 10.00 P.M. to 6.00 A.M. In the night of 10.05.2019, at about 10.00 P.M.,

complainant was on duty. At about 2.30/3.00 A.M., three persons entered into the ATM room, who were having muffled faces. Out of them, two persons were armed with pistols and one person was armed with iron rod. One of them put pistol on the complainant and pushed him out of the ATM room. Four persons were standing outside the ATM room. Two of them were armed with pistols. One was armed with baseball bat and one was armed with iron rod. They were also with muffled faces. They tried to put cloth in the mouth of the complainant which was resisted by the complainant. During that process their faces got uncovered and the complainant could identify them. Thereafter, complainant was made to sit aside. Two of them were talking in Hindi language whereas one was speaking in the language prevalent in the area of Amritsar. Thereafter the complainant heard noise of breaking of ATM machine. The complainant started feeling stiffness and requested the accused to put out the cloth from his mouth. After about ½ hour one person came there with a tractor. The complainant could identify them. Thereafter all the persons loaded the ATM machine in the tractor and ran away on their motorcycle and tractor. The persons armed with pistols, dropped the complainant near cremation ground. The complainant called his friend. With this background the FIR came to be registered.

Learned counsel for the petitioner submits that

petitioner is in custody since 16.07.2019. After lodging of the FIR, the police received secret information and on the basis of secret information, a raid was conducted at the house of Sarwan Singh @ Akashdeep Singh son of Surjan Singh. The police arrested Sarwan Singh @ Akashdeep Singh, Kulwinder Singh @ Kinder and Harpal Singh @ Kalu along with ATM machine and other tools. Thereafter, the Police recorded disclosure statements of Kulwinder Singh @ Kinder and Harpal Singh @ Kalu. On the basis of their disclosure statements, Sukhchain Singh @ Pintu, Rajwinder Singh @ Veeru, Akashdeep Singh son of Jagsir Singh, Sunil Singh @ Sunili and Maliat Singh @ Sandhu were nominated in the FIR. They were arrested thereafter.

Learned counsel further submits that the petitioner was never identified through the complainant despite his assertion in the FIR. Petitioner has been implicated solely on the basis of disclosure statements of co-accused which is not admissible in law. Only currency notes of Rs.16,000/- have been recovered from Malkiat Singh @ Sadhu. No currency notes have been recovered from Rajwinder Singh @ Veeru except a motorcycle. An amount of Rs.22,000/- along with motorcycle and one iron rod have been recovered from Akashdeep Singh son of Jagsir Singh.

Learned counsel further submits that recovery of

currency notes cannot be termed to be the tainted money for want of mark of identification on the currency so looted from the ATM machine.

Learned counsel further submits that the identity of the petitioner solely on the basis of disclosure statements of co-accused would remain debatable as no test identification parade was conducted in terms of Section 54-A Cr.P.C., which deals with identification of person arrested. Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction, may on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit.

Learned State counsel admits that there is no test identification parade conducted in compliance of Section 54-A Cr.P.C., but there is dock identification in the Police Station, where the complainant has identified three persons namely Raj Kumar @ Raju, Sukhchain Singh @ Pintu and Akashdeep S/o Jagsir Singh on 30.06.2019.

Learned State counsel however opposed the bail on the ground that the petitioner is involved in heinous offence. Recoveries have been effected from all the co-accused and

petitioner has been implicated on the basis of disclosure statements of the co-accused. Recovery of incriminating material has been effected from the petitioner.

Admittedly, no prosecution witness has been examined so far. The charges have been framed on 07.12.2019. Petitioner is in custody for the last 2 years and 3 months.

Taking into consideration of the aforesaid attending facts and circumstances of the case and in view of the situation arising out due to COVID-19 pandemic, I deem it appropriate to enlarge the petitioner on regular bail, without adverting to the merits of the case.

In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

October 08, 2021

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No