IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-5240-2022
Date of decision: 02.09.2022

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Mohit ....Petitioner(s)

Versus

State of Haryana ....Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. R.S. Rai, Sr. Advocate,
with Mr. Sushil Jain, Advocate,
Mr. Karan Pathak, Advocate,
Mr. Farhad Kohli, Advocate,
and Ms. Eknoor Sara, Advocate,
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

G.S.SANDHAWALIA, J. (Oral)

The petitioner, in the present petition filed under Section 439 Cr.P.C., seeks regular bail in case FIR No. 122 dated 30.10.2018 registered under Sections 148, 149, 302, 307, 323, 506, 120-B IPC and under Sections 25, 54 and 59 of the Arms Act, 1959. The present is a second petition filed for the said relief. The petitioner had earlier approached this Court for grant of regular bail in CRM-M-43013-2020. The same was dismissed as withdrawn vide order dated 04.08.2021 by filing an application for getting the date pre-poned. The said order reads thus:-

> *"The present application has been filed for withdrawal of the main bail application bearing CRM-M No.43013 of 2020, while praying for pre-ponement of the date of hearing from 09.09.2020.*
>
> *Notice in the application.*
>
> *Mrs. Kirti Singh, DAG, Haryana, accepts notice*

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on behalf of the respondent-State and submits that she has no objection of the applicant-petitioner is allowed to withdraw the bail application.

Accordingly, the date of hearing in the main case is pre-poned to today from 09.09.2021.

In view of the averments made in the application, the same is hereby allowed and the main bail application bearing CRM-M No.43013 of 2020 is dismissed as withdrawn.

CM stands disposed of."

Apparently, thereafter the petitioner filed a third application for regular bail before the Additional Sessions Judge, Panipat, which was dismissed on 16.12.2021. The argument whether the petitioner was the aggressor party or not was considered and rejected on the ground that it is a question of evidence and could not be adjudicated at that stage and as the applicant had opened attack upon the complainant party firing a number of shots in which one of the members of the complainant party had died and four others have received simple and grievous injuries by fire shots. However, the Court had considered and granted interim bail for a period of one month keeping in view the fact that the wife of the applicant was expecting. Thereafter, the present petition has been filed.

It is submitted that the petitioner's father namely Jagat @ Pappu has been granted the benefit of concession of bail by the co-ordinate Bench in CRM-6837-2020 on 23.11.2020. It is submitted that the disclosure statement of the said accused dated 09.11.2018 was also taken into consideration apart from the fact that he had medical issues as such and had already remained in custody since 09.11.2018 and only two prosecution witnesses have been examined out of the total 33 prosecution witnesses. It is further pointed out that the petitioner was arrested on 30.10.2018 and has

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been in custody as per the custody certificate now filed by the State dated 27.04.2022 (Annexure R-1), which goes on to show that at that point of time, he had undergone 2 years, 11 months and 6 days. It is thus stated that he has undergone, at present, approximately 3 years and 4 months of actual custody. It is further pointed out that on 29.03.2022 also, interim bail had been granted to the petitioner for a period of 3 weeks and while noticing that he had also been granted the benefit of 20 days interim bail to attend the last rites of his mother which had been extended on account the fact that the delivery was due on 31.03.2022.

It is, thus, submitted that the trial is not progressing and only one more witness has been examined after the grant of bail to the father of the petitioner. It is further pointed out that an application under Section 319 Cr.PC. was filed and 11 more persons as such were sought to the summoned, which is stated to be dismissed on 17.11.2021 and a revision is also pending against the said order in this Court. It is submitted that though there are allegations of giving gun shot injuries to the deceased namely Savitri from the licensed gun of the father of the petitioner, which he was wielding and he had also given injuries to Satbir, the brother of the complainant Devi Singh. Other injuries have also been attributed to the father who was carrying a revolver. It is pointed out that a complaint has been filed by Pardeep, one of the injured from the side of the petitioner under Sections 148, 149, 307, 452, 506 IPC, in which a summoning order has been passed on 15.01.2021 wherein, the complainant and 4 other family members have been summoned. It is submitted that the matter has also been committed to the Sessions Court for trial.

Keeping in view the above, this Court is of the considered

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opinion that apparently, the case has not progressed regarding the examining of the prosecution witnesses, which would be clear from the *zimini* orders now placed on record and the last witness apparently was examined on 22.07.2021 namely Devi Singh PW-3. The case is now stated to be fixed for 07.10.2022 and for the intervening period, the complainant party and the witnesses have not put in appearance as the summons issued were never received back. From a reading and perusal of the FIR, *prima facie* it is apparent that the dispute as such took place at the spur of the moment on account of the ladies fighting on the two sides with regard to small children. The matter had initially been settled but thereafter it led to the incident which is stated to be in front of the house of Pardeep, to whom the petitioner is related, who is the nephew as such. It is not disputed that on account of the injuries suffered by Pardeep which were on the vital part of the body and are stated to be dangerous to life and as they were on the head and face, the Magistrate had summoned the complainant side under various provisions of IPC including Section 307 IPC. The statement of CW-2 Dr. Shashi Gupta had also been taken into account that the condition of the said person was serious and he was referred to PGI Khanpur. It is also to be noticed that the petitioner has been released on interim bail for a couple of occasions and had surrendered in time and counsel for the State also could not point out that the petitioner has misused the concession of interim bail granted and surrendered back in time or has any criminal background.

Thus, keeping in view the period of 3 years and 4 months which have been undergone by the petitioner and the fact that it would be an issue of debate as such before the trial Court whether the right of private defence has been exceeded to or not, this Court is of the considered opinion that

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since the trial is not proceeding since the last over an year, he shall be entitled for the concession of bail during the pendency of trial since even his father, who was wielding the revolver, was granted the benefit as such by the co-ordinate Bench, as per order Annexure P-4.

Accordingly, the petition is allowed. The petitioner be released on regular bail subject to furnishing of adequate bail bonds/surety bonds to the trial Court. It is, however, made clear that anything expressed above is a *prima facie* opinion and not to be taken as an opinion on the merits of the case.

02.09.2022 (G.S. SANDHAWALIA)
shivani JUDGE

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

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