

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

214 (2)

**CRM-M-8640-2022
Date of decision: 09.03.2022**

Dr. ASHOK KUMAR SAINI

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. A.P.S. Deol, Senior Advocate with
Mr. H.S. Deol, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G. Haryana.

VINOD S. BHARDWAJ. J. (Oral)

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

1. The instant petition is for seeking concession of regular bail in case FIR No. 9 dated 23.01.2022 under Sections 4 and 5 of the Explosive Substances Act, 1908 and Section 188 and 120-B IPC at Police Station Satnali, District Mohindergarh (Annexure P-1).

2. Learned counsel for the petitioner *inter alia* argues that the petitioner is a Doctor of Philosophy from University of Rajasthan and is working in Biharilal Mahavidhaylaya, Gagrata, Tehsil Khetri, District Jhunjhunu and is also the acting Principal w.e.f. 25.06.2019. He contends that his brother namely Ramesh Kumar Saini has been issued license by the Chief Controller of Explosives since 2018 which is valid till 31.03.2023 for

possession of explosives of class-1, 2, 3, 4, 5, 6 and 7 in the magazine. The attention in this regard is drawn to Annexure P-2. It is pointed out that one Sombir was arrested on 23.01.2022. His disclosure was recorded wherein he had stated that he had purchased the explosive material from one Pappu resident of Jhotwara and Ramesh resident of Bharatpur, however, he retracted from the aforesaid disclosure and got recorded a fresh disclosure wherein it was alleged that he had procured the explosive material from Om Parkash @ Pappu resident of Solankia Dhani Mehra. On the disclosure of Mukesh, Om Parkash @ Pappu was arrested after nominating him as an accused on 26.01.2022. A disclosure of Om Parkash @ Pappu was thereafter recorded wherein he named the petitioner as the person from whom who had sourced the explosive material.

3. Learned counsel for the petitioner further points out that pursuant to the disclosure, the petitioner was taken in custody, however, no recovery of any nature whatsoever had been effected from him. It is also pointed out that the mining lease is in favour of family members of the petitioner and there are four partners. Reference in this regard is made to the registered partnership deed (Annexure P-3) to substantiate the same and to contend that the petitioner has no link with the business of Yash Enterprises. It is argued that the petitioner has been roped in as an accused only because of his being a member of the family. The petitioner has no concern with the said business and in fact carries on his academic and literary pursuits. Apart from being the acting Principal of the College in question, he is also a visiting faculty in another College at Sikar.

4. A forceful reference is also made by the learned counsel to the contention that in fact another FIR bearing No.87 dated 11.06.2021 was

registered for offence under Section 379, 188, 279, 336, 120B and 34 IPC and Section 4, 5, 9-B(1) (b) of the Explosive Substances Act, 1884 at Police Station, Satnali. The allegations in the said FIR were identical. The only difference is that the person initially arrested in the said case happened to be Sombir. In the said case, the petitioner had applied for concession of regular bail. The same was allowed by the learned Additional Sessions Judge, Narnaul vide order dated 11.02.2022 (Annexure P-8) after noticing the period of custody as well as the absence of any recovery from the petitioner and also noticing that the co-accused had already been released on bail. It is pointed out that bail application in the instant case was however, listed before another Judge who has declined to extend the concession even though there would be no variance in the role attributed to the petitioner or in the nature of allegations leveled out against him.

5. Mr. Kanwar Sanjiv Kumar, Assistant Advocate General, Haryana on instructions from ASI Jai Bhagwan submits that the petitioner had been instrumental in discreet sale of explosive substance to the other persons. Even though the petitioner was stated to be working as Lecturer, however the said College is being run by the family of the petitioner himself. He further contends that investigation in the matter is pending and thus opposed the grant of regular bail to the petitioner.

6. Learned counsel, however, could not dispute the fact that the petitioner already stands enlarged on bail in case FIR No.87 dated 11.06.2021 vide order dated 11.02.2022 and that there is no material difference in so far as the role, nature of offence, recovery and allegations against the petitioner are concerned. It is also not disputed by him that the

him. Merely because the brother of the petitioner is absconding, no liability can be passed upon the petitioner at the stage.

7. Having considered the rival submission of the respective parties and taking into account the fact of the petitioner has been in custody since 26.01.2022 and that nothing has been recovered from the petitioner. No investigation has to be made against the role and/or attribution of the petitioner. Besides, no recovery of any nature whatsoever was made at the instance of the petitioner. The investigation in the case is stated to be still pending. Conclusion of the trial is likely to take long time. There would be no purpose to continue incarceration of the petitioner behind bars.

8. Accordingly, the instant petition is allowed and the petitioner is ordered to be released on bail on his furnishing requisite bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate, concerned.

(VINOD S. BHARDWAJ)
JUDGE

March 09, 2022
Vishal sharma

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