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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.49528 of 2022 (O&M)

Date of decision: 12.12.2022

Surender

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. K.D.S. Hooda, Advocate
for the petitioner.

Mr. Gurbir Singh Dhillon, AAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 2nd petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.275 dated 10.06.2017 under Sections 147, 148, 149, 323, 324, 325, 302, 506 of the Indian Penal Code, 1860 registered at Police Station Sadar Dadri, District Charkhi Dadri.

The earlier one was dismissed as withdrawn vide CRM-M No.30545 of 2020.

Counsel for the petitioner has submitted that the new ground for filing this 2nd petition is that the petitioner, as on today, is in custody for the last 05 years, 05 months and 27 days and he is not involved in any other case and it will take some time in conclusion of the trial.

Counsel for the petitioner, at the very outset, has relied upon the order dated 12.10.2022 passed in CRM-M No.7007 of 2022,

vide which the co-accused of the petitioner namely Tek Ram has been granted the concession of bail. The operative part of the said order, reads as under:-

*“Learned counsel for the petitioner would contend that the petitioner has been in custody for a period of 05 years 03 months and 26 days and that there is no other case pending against the petitioner. It is further the contention that Munni, who was also attributed the injury on the head, has since been found innocent. It is further contended by learned counsel that out of 15 accused, 07 accused were found innocent and that the complainant filed an application under Section 319 CrPC qua 07 accused who were found innocent. The said application was dismissed by the Trial Court. Against the said dismissal order CRR-1851-2018 is pending before this Court in which passing of final order has been stayed. Learned counsel has further contended that the said petition has been pending since 2018 and is being adjourned repeatedly on the request of learned counsel for the petitioner therein. Further reliance has been placed on the judgment passed by the Supreme Court passed in **MD. Raja & Anr. Vs. The State of West Bengal [Criminal Appeal No.1293 of 2022, decided on 22.08.2022]**.*

Learned State counsel has referred to the status report wherein it has been stated that the fatal blow has been attributed to the petitioner herein. He is, however, not in a position to deny the fact that the petitioner, as of today, has been in custody since 05 years 03 months and 26 days and there is no other case pending against him. He is also not in a position to deny the fact that passing of final order has been stayed in CRR-1851-2018.

Heard.

In the present case the petitioner has been in custody now for a period of 05 years 03 months and 26 days and passing of final order has been stayed by this Court in CRR-1851-2018. The trial is likely to take time.

Keeping in view the fact that the period of incarceration is 05 years 03 months and 26 days and the passing of final order in the trial has been stayed by this Court in CRR-1851-2018, without commenting upon the merits of the present case, I deem it appropriate to allow the present petition and to grant the concession of regular bail to the petitioner. The petitioner is directed to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate/Trial Court concerned.”

Counsel for the petitioner has further submitted that the main injury is attributed to the co-accused of the petitioner namely Tek Ram, who has already been released on bail and the stay granted by this Court in CRM-M No.1851 of 2018, qua passing of the final order is still operative. It is also submitted that the petitioner is in custody for the last 05 years, 05 months and 27 days and out of 34 PWs, 28 PWs have been examined and it is also stated at Bar that the material witnesses have already been examined and thus, there is no possibility for the petitioner to tamper with the prosecution evidence.

Counsel for the State has filed the Custody Certificate today in the Court and has not disputed the factual position but opposed the prayer for bail.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 05 years, 06 months (approx.); the co-accused of the petitioner is already

released on bail; the custodial interrogation of the petitioner is not required; all the material witnesses have already been examined and there is no possibility for the petitioner to tamper with the prosecution evidence and the conclusion of the trial will take some time, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

12.12.2022

yakub

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