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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4515-2023 (O&M)

Date of decision: 28.03.2023

AMIT @ GHODA

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Parveen Kaushik, Advocate
for the petitioner.

Mr. Ram Kumar Singla, D.A.G., Haryana.

HARSH BUNGER, J. (ORAL)

Petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure (*in short "Cr.P.C."*) for grant of regular bail in case FIR No.0989 dated 26.10.2016, registered under Sections 307, 379-B and 323 read with Section 34 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959, at Police Station Sadar Jhajjar, District Jhajjar (Haryana).

Status report by way of an affidavit of Sh. Rahul Dev, HPS, Deputy Superintendent of Police, Jhajjar, District Jhajjar, on behalf of State of Haryana, has been filed, which is already on record.

Custody certificate dated 27.03.2023 of the petitioner has been filed by learned State Counsel in the Court today, which is taken on record, subject to all just exceptions.

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Succinctly, the above-said case FIR was registered on the complaint of one Kishan Lal son of Sh. Gobind Ram, stating therein that he has been running a junk-yard shop and on 26.10.2016 at about 11:30 a.m., he had brought a sum of Rs.one lakh and seated in the office. His servant was also seated adjacent to him. Certain other persons namely, Kale, Janarthan, Monu alias Chautala were also available in the office at that time and in the meantime, two young boys with muffled face armed with pistols in their hands barged into the office and pointed pistol upon the complainant and another miscreant clobbered the pistol butt upon his head and asked to hand over all the belongings. Thereafter, another boy fished out countrymade pistol and opened the fire upon Kale which struck into the legs and he handed over Rs.1,00,000/- to the culprits. The culprits ran away from the spot. On the basis of said complaint, a case under Sections 323, 307 and 379-B read with Section 34 of the Indian Penal Code and Section 25 of the Arms Act was registered against the culprits.

Learned counsel for the petitioner submits that the petitioner was initially arrested in this case on 06.12.2016 and thereafter, he applied for regular bail, which was granted to him on 12.10.2017 by the learned Additional Sessions Judge, Jhajjar. It is submitted that the challan in the said case was filed on 05.04.2017; charges were framed on 07.09.2017 and there are total 28 witnesses. Learned counsel further submits that the petitioner came to be arrested in another case; accordingly, he could not appear before the trial Court in the present case, whereupon, his bail was cancelled on 06.12.2019. It is submitted that after the grant of regular bail, the petitioner was regularly appearing before the trial Court; however, since he was arrested in another case, therefore, he could not appear before

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the trial Court in the present case and accordingly, his bail was cancelled. Thereafter, the petitioner was produced before the Court in the present case on production warrant on 02.08.2021 and since then, he is in custody.

Learned counsel for the petitioner submits that the petitioner has been in custody for the total period of 02 years – 06 months and 03 days (as on 27.03.2023). It is submitted that there are total four private witnesses in this case and all have been examined and the conclusion of the trial will take some time. Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by trial Court; accordingly, prayer for grant of regular bail is made.

Per contra, learned State counsel has opposed the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence and submitted that the petitioner is a habitual offender as he is involved in six more cases i.e. **FIR No.348** dated **25.10.2016** registered under Section **379-B IPC** at **Police Station Beri**; **FIR No.447** dated **02.11.2016** registered under Sections **398, 401 IPC** and **25/54/59 of the Arms Act** at **Police Station SadarJhajjar**; **FIR No.102** dated **06.04.2019** registered under Section **25/54/59 of Arms Act** at **Police Station Kanina**; **FIR No.138** dated **31.10.2020** registered under Section **25/54/59 of Arms Act** at **Police Station Machhroli**; **FIR No.323** dated **10.10.2016** registered under Sections **379-B, 392, 285 of IPC** and **25/54/59 of Arms Act** at **Police Station SadarDadri** and **FIR No.106/2020** registered under Sections **307, 323, 325, 341 and 506, 34 of IPC** at **Police Station Dujana**. It is further submitted that the petitioner has earlier violated the conditions of bail; whereupon, his bail was cancelled on 06.12.2019. However, it is not

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disputed that earlier the petitioner was granted regular bail on 12.10.2017 by the learned Additional Sessions Judge, Jhajjar; however, the same was cancelled on 06.12.2019 and subsequently, he was re-arrested in this case and was produced before the trial Court on 02.08.2021 and since then, he has been in custody. It is also not disputed that the total custody of the petitioner is more than 02 years and 06 months and out of total 28 witnesses, 23 witnesses have been examined, which includes all four private witnesses.

I have heard learned counsel for the parties and perused the paper book as well as status report and custody certificate of petitioner filed by learned State counsel.

The present case FIR No.0989 dated 26.10.2016 was registered against un-known persons. The petitioner is around 32 years of age and has undergone custody for more than 2½ years.

Concededly, the investigation in this case was complete and the trial is going on and out of 28 witnesses, 23 witnesses have been examined, which includes four private witnesses; hence, the trial is likely to take some time and no useful purpose would be served by keeping the petitioner behind the bars.

So far as the involvement of petitioner in six other cases is concerned, suffice it to say that the registration of other cases against the petitioner cannot be taken to be as the sole material consideration for the purpose of declining him the relief of bail. In this regard, reference can be made to the judgment rendered by Hon'ble Supreme Court in case of ***Maulana Mohammed Amir Rashadi vs State of Uttar Pradesh and Another, reported as (2012) 2 Supreme Court Cases 382***, wherein it was

observed as under :-

“ It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

In view of the above, the instant petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the Illaqa Magistrate / Duty Magistrate / trial Court concerned. However, before release, the concerned Station House Officer be informed and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of the case and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would furnish his telephone number to the concerned Station House Officer and would keep his mobile location on. Petitioner would also furnish an undertaking to the effect that he will not indulge in any illegal activity. Petitioner shall appear before the police station concerned on first Monday of every month till the conclusion of trial in this case and on each such appearance, he shall inform in writing to the concerned Station House Officer that he is not involved in any other crime other than the case(s) mentioned in the present order.

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In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the trial Court. The same would be liable to be forfeited as per law, in case of absence of the petitioner from trial without sufficient cause.

Further, the State/prosecuting agency/State police shall be at liberty to observe the behaviour of the petitioner during bail period, and in case it feels that the petitioner is indulging in influencing any of the witnesses or tampering with the prosecution evidence in any manner or otherwise causing interference with the progress of trial or violates any condition of bail, it shall be open for the State/prosecuting agency/State police to move the trial Court for cancellation of bail, which shall be decided by the trial Court on merits.

Nothing expressed here-in-above shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

The petition is accordingly disposed of.

March 28, 2023
Amandeep/gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No