

CRM-M-15361-2023

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Neutral Citation No: 2023:PHHC:048250

214

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-15361-2023

Date of Decision: April 10, 2023

Devender @ Raja

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.J.S.Thind, Advocate
for the petitioner.

Mr.Kirpal Singh Thakur, AAG, Haryana.

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RAJESH BHARDWAJ, J.(ORAL)

Instant petition has been filed under Section 439 Cr.P.C. praying for grant of regular bail to the petitioner in case FIR No.77, dated 10.03.2019, under Sections 302/379-B/449 IPC, registered at Police Station Murthal, District Sonipat, Annexure P-1.

Adumbrated facts of the case are that on the statement of Pintu Mehta S/o Gopal Mehta, FIR was registered. It was alleged that on 10.03.2019, his maternal uncle was lying in the kitchen in the field. At about 1.10 pm when he came to the farm, he saw that a young boy was stealing from the bag lying there and when he stopped him he scuffled with him and snatched his mobile phone and ran away. Thereafter he went inside the kitchen and saw his maternal uncle Kamal Mehta lying in the pool of blood. Blood soaked knife was also lying there. On checking he found that young boy, who was stealing from the bag, had killed his maternal uncle

Kamal Mehta. It was further alleged that he snatched his mobile phone and

Rs.3000/- and when he chased him, the said boy had threatened him to be killed with the knife. On the basis of complaint, FIR was lodged and investigation was commenced.

Accused/petitioner was arrested by the Investigating Agency on 11.03.2019. Postmortem of the body was conducted. Samples of blood from the weapon were collected and sent to the FSL. The petitioner approached the Court of learned Sessions Judge, Sonipat, praying for grant of bail, however, after hearing both the sides, the same was declined vide order dated 31.10.2022. Aggrieved by the same, petitioner is before this Court praying for grant of regular bail.

It has been vehemently contended by counsel for the petitioner that petitioner has been falsely implicated in this case. He has submitted that petitioner is not named in the FIR. He further submits that no test identification parade was carried out for establishing the identity of the accused. He submits that the evidence collected so far by the Investigating Agency, is not sufficient to connect the petitioner with the alleged offence. He submits that besides all the facts and circumstances, it is an admitted fact that petitioner is behind bars since 11.03.2019 and thus he has already completed more than four years of custody and the prosecution has not been able to conclude the trial. He has drawn attention of this Court to the various zimni orders passed by the learned trial Court which would show that prosecution witnesses are being summoned by the trial Court by issuing bailable warrants time and again to secure their presence. He submits that petitioner has no criminal antecedents and in the last four years, the prosecution could examine hardly half of the prosecution witnesses and thus

in the facts and circumstances, the petitioner deserves to be granted bail.

Learned State counsel, on the other hand, has opposed the submissions made by counsel for the petitioner. He has submitted that occurrence in question had taken place on 10.03.2019 whereas the petitioner was arrested on the very next date. He has submitted that case of the prosecution rests upon the eye witness account as the complainant had seen the petitioner at the time of occurrence being committed and as he did not know the name of the petitioner hence he could not be named in the FIR. He submits that from FSL report received, complicity of the petitioner is duly corroborated. He further submits that in all there are 21 prosecution witnesses out of which prosecution has examined 13 as on date. He submits that as per the instructions, the petitioner is not involved in any other case.

Heard.

Evidently, petitioner is behind bars since 11.03.2019 and thus he has completed more than four years in custody. Case of prosecution is based upon the eye witness account as the complainant has alleged that it was the petitioner who was committing theft from the bag lying at the place of occurrence. Zimni orders produced by learned counsel for the petitioner would reveal that learned trial Court has to issue bailable warrants in the sum of Rs.5,000/- for securing presence of the prosecution witnesses. The Court cannot ignore the fact that speedy trial is the fundamental right of every accused. The petitioner is languishing behind bars from the last four years and till date prosecution has been able to examine only 13 witnesses out of 21. Long custody of the petitioner pending trial in itself is a strong ground for considering the bail petition. The Court would refrain from

committing anything on the merits of the case. The veracity of allegations would be assessed by the trial Court only after appreciation of the evidence led by both the sides. However, this Court would refrain itself from commenting anything on merits of the case, at this stage. In the overall facts and circumstances of the case, this Court finds that counsel for the petitioner succeeds in making out a case for grant of bail to the petitioner.

In totally of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds subject to the satisfaction of trial Court/Duty Magistrate concerned.

Nothing stated herein shall be treated as an expression of opinion on the merits of the case.

April 10, 2023
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(RAJESH BHARDWAJ)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |