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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-18443-2022****Date of Decision: 21.08.2023**

Mandeep alias Monu

...Petitioner

vs.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat**Present :** Mr. Jitender Malik, Advocate
for the petitioner.

Mr. Gaurav Gurcharan Dass Rai, DAG, Haryana.

N.S.Shekhawat J. (Oral)**CRM-16807-2022**

Prayer in the application is for placing on record Annexure P-4 and seeking exemption from filing certified copy of the same.

Application is allowed subject to all just exceptions. Annexure P-4 is taken on record.

CRM-M-18443-2022

The petitioner has filed the instant petition under Section 439 of the Cr.P.C. with a prayer to grant regular bail in case FIR No.269 dated 26.08.2020 registered under Sections 380, 457, 302, 34 of IPC (Later on Sections 380/457 IPC deleted and Section 392 IPC added) at Police Station Bhuna, District Fatehabad.

As per the case of the prosecution, on 26.08.2020, the information was received in the police Station regarding the murder of Jagdish Chander son

of Chiranji Lal, and on getting the said information, the police officials reached at the spot. Shiv Kumar son of Jagdish Chander, since deceased, was found present at the spot. As per him, at about 8/8.30 p.m. on 25.08.2020, his father Jagdish Chander slept in front of shop, after taking a meal and some unknown persons had committed murder of his father by assaulting him. As per the complainant, after killing his father, theft was committed from the drawer of the shop and the cameras were broken. At about 5.45 am, on 26.08.2020, Ravi, neighbour informed him about the incident and whole family reached at the spot.

Learned counsel for the petitioner submits that the petitioner has not been named in the present FIR and was falsely involved due to some ulterior motive. As per the complainant, the alleged occurrence had taken place in the night intervening 25/26.08.2020 and there is no eye-witness of the alleged occurrence. However, on 27.08.2020, a supplementary statement of Shiv Kumar, complainant was recorded and the petitioner was named in the said supplementary statement. Learned counsel further contends that recovery of one CCTV Camera, currency notes of Rs.700/- and Aadhar Card of deceased Jagdish Chander was planted on him during the course of investigation. However, the said recovery does not connect him with the commission of crime in any manner. Learned counsel further contends that the petitioner is in custody since 27.08.2020 and out of 21 witnesses, no witness has been examined so far.

On the other hand, learned State counsel submits that the petitioner was specifically named in the supplementary statement of the complainant and he had played active role in the commission of crime. Apart from that, the

CCTV camera and Aadhar Card of the deceased were recovered from him, which were sufficient to establish the complicity of the petitioner in the commission of crime and he does not deserve the concession of bail.

I have heard the learned counsel for the parties and perused the record.

The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting bail, no doubt the seriousness of the charge is one of the relevant considerations, which should be taken into account, but this Court also has to take into consideration the circumstances, which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, custody of the under trial, chances of threatening the witnesses etc. In the present case, no doubt the allegations levelled by the present petitioner are very serious in nature, however, this Court cannot be oblivious of the fact that the petitioner was arrested in the present case on 27.08.2020 and the petitioner is continuing in custody as an under trial for the last more than 03 years. Once an accused continues in under trial for such a long period, there is no doubt that his rights under Article 21 of the Constitution of India are violated, which is the most basic right of all Fundamental Rights. Even otherwise, the Hon'ble Supreme Court has held a number of judgments that an under trial prisoner cannot be detained in jail custody to an indefinite period and every person, detained or arrested is entitled to speedy trial. This Court is conscious of the fact that on the one hand, the petitioner continues to be in custody for the last more than 03 years, whereas on the other hand, no

witness has been examined, out of total 21 witnesses and the learned trial Court may take considerable time in concluding the trial proceedings.

Thus, without commenting on the merits of the case, the present petition is allowed. The petitioner is ordered to be released on bail pending trial on his furnishing bail bonds and surety to the satisfaction of the concerned trial Court/ Duty Magistrate/Chief Judicial Magistrate subject to the following conditions:-

- (i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.
- (ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.
- (iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.
- (iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.
- (v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.

(vi) In case, the petitioner involves in any other criminal activity, during the pendency of the trial, it shall be viewed seriously.

(vii) The concerned Court may insist on two heavy local sureties and may also impose any other condition, in accordance with law, while accepting the bails bonds and surety bonds of the petitioner.

(viii) The petitioner shall report every 1st and 3rd Monday in English calander month before the concerned SHO till the conclusion of the trial and SHO shall mark his presence by making an entry in the rojnamcha. In case, he does not report on every 1st and 3rd Monday before the concerned SHO, it shall be viewed seriously and the concession granted to him shall be liable to be cancelled and the State of Haryana shall be at liberty to move an appropriate application in this regard.

21.08.2023

hemlata

(N.S.SHEKHAWAT)
JUDGE

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