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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-19746-2023
DECIDED ON: 26th APRIL, 2023

AKSHAY DAHIYA

PETITIONER

VERSUS

STATE OF HARYANA

RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Amit Sharma, Advocate
for the petitioner.

Mr. Gagandeep Singh Chhina, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Section 439 of the Code of Criminal Procedure, 1973 has been invoked for grant of regular bail to the petitioner in case FIR No. 81, dated 23.02.2017, under Sections 148, 149, 323, 365, 386 and 506 IPC and Section 25 of Arms Act, 1959, registered at Police Station Rajendra Park, Gurugram.

2. Learned counsel for the petitioner has contended that neither the petitioner has been named in the FIR nor any specific role has been attributed to him. The petitioner has been nominated on the basis of disclosure statement of the co-accused namely Sunil and Hitesh. It is asserted that the petitioner is in custody since 21.04.2017 and now the case is fixed for prosecution evidence.

3. Custody certificate of the petitioner filed by learned State

counsel is taken on record. As per the custody certificate the petitioner has undergone incarceration for a period of 11 months and 7 days as of now. He opposes the prayer made in the present petition stating that the group of 8-9 boys gave beatings to the complainant and then took him to some unknown place. He further submits that the petitioner is a habitual offender, as is evident from the custody certificate.

4. On a query put to the learned State counsel, he states that no specific role is coming forth in the FIR regarding the involvement of the petitioner in commissioning of offence, which corroborates the stands taken by the counsel for the petitioner.

5. Having heard learned counsel for the respective parties.

6. Considering the custody period undergone by the petitioner so far and the fact that in the present case challan stands presented where conclusion of trial shall take sufficient long time, this Court is of the considered view that no fruitful purpose would be served by keeping the petitioner behind the bars any more.

7. As far as the contention raised by the learned State counsel with regard to the pendency of other cases is concerned, this Court in the case of **Baljinder Singh @ Rock vs. State of Punjab; CRM-M-25914-2022, decided on 03.03.2023**, has held that a right under Article 21 of the Constitution of India includes right to speedy trial and expeditious disposal.

8. This Court would go little further to consider that there is a difference between grant of bail under Section 439 and 438 of Cr.P.C., as compared to suspension of sentence under Section 389 of Cr.P.C.. In the case of suspension of sentence, the conviction order is already there

whereas while considering the petition either under Section 438 or 439 Cr.P.C., there may be presumption of innocence which in fact is a fundamental postulate of criminal jurisprudence.

9. Considering the said principle alone, the Hon'ble Apex Court in the case of *Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131* has held that the bail is the rule and jail is an exception.

10. No doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would lend the petitioner in a situation of denial the concession of bail.

11. In view of afore-said discussions, the petitioner is ordered to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, concerned.

12. The petition stands allowed in the above terms.

13. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

(SANDEEP MOUDGIL)
JUDGE

26th APRIL, 2023

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