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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-22655-2022

Date of Decision: November 20, 2023

Kalu Khan

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Jagdeep Singh, Advocate
for the petitioner.

Mr.Arun William, AAG, Punjab.

Mr.Vineet Sachdeva, Advocate
for LR of complainant.

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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.24, dated 30.03.2012, under Sections 365, 382, 452, 506, 427, 148, 149 IPC and Sections 25, 27 of Arms Act, 1959 (Section 392, 395 IPC added later on) Police Station Sadar Abohar District Ferozepur.

Adumbrated facts of the case are that Gurwant Kaur @ Guro made a statement before the police. She alleged that on 30.03.2012, at about 3.30 p.m. several vehicles came and stopped in front of their kothi and out of these vehicles, Samarbir Singh and Kulbir Singh having guns came out. Alongwith them Tari son of Vir Singh and Chand Kumar son of Sher Chand and 5-6 more persons were also there out of which 3 men were speaking in Rajasthani language. They forcibly entered their kothi and started threatening them. Their house was ransacked and they broke open

the bolt of boxes and almirahs. They were brought outside and they saw that many persons were standing alongwith the vehicles. Lateron being frightened, they dropped all three of them from the vehicle. On coming back to their home they found the cash and jewellery having been stolen from their house. It was alleged that all these accused trespassed in their house with an intention to take forcible possession of their kothi on gun point. The request was made to take legal action against the accused. On the basis of the complaint, formal FIR was registered and the investigation commenced. During course of investigation, co-accused were arrested and the petitioner was also named as one of the accused and thereafter he was arrested on 07.12.2021. On completion of the investigation, charge-sheet was filed against seven accused. However, petitioner could not be arrested and thus he was declared proclaimed offender on 21.03.2017. Later on, on the order of this Court, the petitioner surrendered on 07.12.2021 and since then he is behind bars. The petitioner approached the Court of learned Additional Sessions Judge, Fazilka praying for grant of bail, however, the same was declined by it vide its order dated 10.12.2021. Aggrieved by the same, the petitioner earlier also approached this Court by filing CRM-M-1674-2022, however, the same was dismissed as withdrawn vide order dated 23.02.2022 and hence petitioner is before this Court by way of present petition.

Counsel for the petitioner has submitted that the petitioner was falsely implicated in this case. He has submitted that neither the petitioner has been named in the FIR nor there is any recovery effected from him. He submits that the petitioner has been named in this case on the basis of the statement made by the co-accused, which is not even admissible in evidence.

He submits that though the petitioner was declared proclaimed offender, however, he had surrendered before the Court on 07.12.2021 and since then he is behind bars. He has submitted that material witnesses have already been examined by the prosecution. He has submitted that the co-accused have already been tried by the trial Court and they have been convicted for the offences under Sections 365 IPC and 452 IPC and sentenced for a period of five years and three years RI respectively by the trial Court vide judgment and order dated 17.01.2022. He further submits that sentence of all the other accused has already been suspended by the appellate Court. He submits that the petitioner is not involved in any other case and thus in the overall facts and circumstances, he deserves to be granted bail.

Per contra, learned State counsel has submitted that petitioner alongwith co-accused have abducted the complainants and robbery was committed in their house. He submits that rest of the co-accused have already been tried by the trial Court and they have already been convicted. He submits that the petitioner remained proclaimed offender for about more than four years. He further submits that out of 12, only three witnesses have been examined. It is submitted that petitioner remained proclaimed offender for a considerably long time and hence he does not deserve the concession of bail. He further submits that complainant is no more.

Mr.Vineet Sachdeva, Advocate, appears for the son of the complainant and opposes the submissions made by counsel for the petitioner.

Heard.

Evidently, occurrence in question had taken place on

30.03.2012. During investigation the name of the and petitioner figured as one of the accused. Though co-accused were arrested and they were tried by the trial Court and finally convicted for the offences punishable under Sections 365 IPC and 452 IPC but as the petitioner remained proclaimed offender, he could not be tried alongwith the co-accused. Later on he surrendered on 07.12.2021 and since then he is behind bars. As submitted before this Court, out of 12 witnesses, three have already been examined. The complainant is said to have died. As has been submitted before this Court, the trial Court has convicted the co-accused under Sections 365 and 452 IPC wherein the maximum sentence has been awarded to them is five years RI. There is nothing on record to show that petitioner is involved in any other case.

In the totality 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.

November 20, 2023
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(RAJESH BHARDWAJ)
JUDGE

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