

CRM-M-24244-2023

2023:PHHC:143880

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-24244-2023

Date of Decision : November 09, 2023

Govind @ Gobinda

.....Petitioner

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. B.S.Makkar, Advocate
for the petitioner.

Mr. Bhupender Singh, DAG, Haryana.

KULDEEP TIWARI. J.

1. This is the second bail petition filed by the petitioner-accused seeking the relief of regular bail during the pendency of trial in FIR No.275 dated 2.9.2016, under Sections 186, 307, 333, 353, 120-B, 34 IPC and Sections 25 and 27 of the Arms Act, 1959 registered at Police Station City Mandi, Dabwali, District Sirsa.
2. The criminal agency was set into motion on a statement made by ESI Karamveer son of Sh.Munnshi Ram, who was posted as an Escort Guard, Sirsa.
3. On perusal of the FIR, as recorded on the basis of the statement made by the complainant reveals that it is a case of indiscriminate firing by the three accused persons in the Court premises which caused injuries to one of the prisoners, namely, Chotu Ram son of

Sant Lal, who was being produced by the jail authorities in the Court and one of the Clerk of an Advocate. After opening the firing, all the three persons ran away from the Court premises.

4. Thereafter the present petitioner alongwith .32 bore pistol, 6 cartridges loaded in it and 8 live cartridges of .32 bore in his right pocket pant alongwith three other accused, who also had guns and ammunition with them were arrested. One of the accused also sustained bullet injury. They were arrested by the police officials of Police Station Mokha, District Bikaner by laying Naka, where they also tried to hit the police barricades and tried to run over the police car. A separate FIR No. 469 dated 2.9.2016, under Sections 307/279 IPC, under Section 25/54/59 of the Arms Act and Section 3 of PDP Act, was also registered in the aforesaid Police Station. During investigation in the aforesaid FIR, the accused persons disclosed that they have also fired on their opponent Chhotu Bhat in Dabwali Court.

5. Learned counsel for the petitioner submits that the petitioner is behind the bars for the last 7 years, and there is no progress in the instant matter.

6. A specific report was called from the trial Court to know the reasons behind the delay in the disposal of the trial in the instant FIR. The report sent by the learned Additional District and Sessions Judge, Sirsa reveals that the present petitioner and his co-accused Lawrence Bishnoi and Naveen @ Arzu have been confined in different jails and they are shifted to one jail from another multiple times due to their involvement in many other criminal cases and their presence could be

secured only on 4.3.2023, after making various efforts by this Court from 13.5.2022 onwards. Even after 4.3.2023, the presence of accused Lawrence Bishnoi could not be made possible and also on the next dates i.e. 21.4.2023, 6.6.2023 and 12.7.2023. It is further revealed that out of total 45 witnesses cited by the prosecution, only 11 witnesses have been examined, whereas, four witnesses have been given up.

7. Further reply filed by way of affidavit by the State makes a clear cut revelation that it is a case of gangwar, where the petitioners with an intention to kill one of his opponent has shown audacity even to open fire when he was in the custody of the police and being produced before the Court. The allegations against the petitioner are that he is the member of Lawrence Bishnoi Gang and he opened fire upon the opponent gang when he was being produced by the police official in the Court. The affidavit further speaks out that the petitioner is the main accused, who caused gun shot injury to Chhotu Bath. The custody certificate filed by the State of Haryana through Deputy Superintendent of Police, District Prison(Sirsa), Haryana is taken on record, as per which the petitioner is involved in **seven more cases**.

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

9. *“Bail is the Rule and Jail is an Exception”*. This basic principle of criminal jurisprudence was laid down by the Hon’ble Supreme Court, way back in 1978, in its landmark judgment titled ***“State of Rajasthan V.Balchand alias Baliay”, 1977 AIR 2447, 1978 SCR (1)***

535. This principle finds its roots in one of the most distinguished fundamental rights, as enshrined in Article 21 of the Constitution of India. Though the underlying objective behind detention of a person is to ensure easy availability of an accused for trial, without any inconvenience, however, in case the presence of an accused can be secured otherwise, then detention is not compulsory.

10. The right to a speedy trial is one of the rights of a detained person. However, while deciding application for regular bail, the Courts shall also take into consideration the fundamental precept of criminal jurisprudence, which is “the presumption of innocence”, besides the gravity of offence(s) involved.

11. Also, in ***Siddharam Satlingappa Mhetre v. State of maharashtra, Criminal Appeal No.2271 of 2010***, the Hon’ble Supreme Court has insisted upon striking a perfect balance of sanctity of an individual’s liberty as well as the interest of the society, in grant or refusing bail. The relevant extract of the judgment (supra) is reproduced hereinafter:-

3. The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other

hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.

12. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled legal principle(s) of law.

13. Considering the gravity of the offence and the role of the present petitioner and the fact that out of total 45 witnesses cited by the prosecution, only 11 witnesses have been examined and without commenting upon the merits of the case, this Court, at this stage, is not inclined to grant the relief of regular bail to the petitioner.

14. The instant bail petition is, hereby, dismissed.

15. Considering the age of the trial and the peculiar facts as explained by the learned trial Court, this Court, at this stage, deems it fit and appropriate to issue directions to the Superintendent of Police, Sirsa to make all efforts to produce the accused persons before the trial Court either physically or through virtual mode. The Superintendent of Police, Sirsa is also directed to ensure the examination of the prosecution witnesses on each and every date fixed by the learned trial Court. The learned trial Court shall make every endeavor to conclude the trial most expeditiously.

(KULDEEP TIWARI)
JUDGE

November 09, 2023

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Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No