

CRM-10902-2023 in/and
CRM-M-29939-2022

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2023:PHHC:044960

102+210(A)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-10902-2023 in/and
CRM-M-29939-2022
Date of Decision: 22.03.2023

Happy

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Gurjeet Singh Kaura, Advocate
for the petitioner.

Mr. Amrik Narwal, DAG, Haryana.

HARSH BUNGER J. (ORAL)

CRM-10902-2023:

Present application is filed for placing on record copies of orders dated 30.12.2022 and 19.12.2022 passed by the Court of Additional Sessions Judge, Sirsa, as Annexures P-5 and P-6.

For the reasons mentioned in the application, copies of orders dated 30.12.2022 and 19.12.2022 passed by the Court of Additional Sessions Judge, Sirsa, being Annexures P-5 and P-6, respectively, are taken on record, subject to all just exceptions.

Application is accordingly disposed of.

CRM-M-29939-2022:

Present petition is filed under Section 439 of the Code of

Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.46 dated 09.02.2022, under Sections 392, 394 & 397 of the Indian Penal Code (Section 120-B of the Indian Penal Code, added later on) and Section 25 of the Arms Act, registered at Police Station Ellenabad, District Sirsa.

Status Report by way of affidavit dated 17.03.2023 of Mr. Virender Singh, H.P.S., Deputy Superintendent of Police, Ellenabad, District Sirsa and Custody Certificate dated 18.03.2023 of the petitioner are filed by learned State counsel in Court today, which are taken on record, subject to all just exceptions.

Succinctly, the aforesaid FIR No.46 dated 09.02.2022 was registered on the statement of complainant, namely Chhavi d/o Vinod Kumar, alleging that on 09.02.2022 at about 1:30 P.M., when she and her mother, namely Girja Devi, were present at home and her father had gone to market for some work then two boys wearing masks entered their house and one of them pointed pistol on the complainant whereas the other boy gave *kappa* blow from the reverse side on the wrist of her left hand and threatened the complainant to take out all the things available in house otherwise they would kill her. Thereafter, the complainant raised alarm, which attracted her mother, who was doing laundry work at the roof of the house, whereupon the complainant's mother came at the spot and the accused assaulted the complainant's mother as well in the same way as complainant. Thereafter, the accused took a bag carrying an amount of Rs.40,000/- from the Almirah and fled away from the spot on the motorcycle of third person, who was waiting outside the house of complainant.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present FIR No.46 dated 09.02.2022 on the statement of complainant, namely Chhavi d/o Vinod Kumar, as the FIR in question was initially registered against the unknown persons with masked faces. It is contended that the supplementary statement of complainant was recorded on 09.02.2022, i.e. the day of occurrence itself, (Annexure P-2), however, she completely changed her version therein from the one recorded in the FIR. Learned counsel states that since there was no evidence to connect the petitioner with the alleged occurrence, therefore, the aforesaid supplementary statement of complainant (Annexure P-2) has been recorded in the back date and the same is a totally fabricated document and the said supplementary statement of complainant (Annexure P-2) was never sent to the Magistrate. Learned counsel states that the petitioner was arrested on 10.03.2022, however, no test identification parade was conducted in the present case. It is submitted that the application for grant of regular bail moved by the petitioner before the Court of Additional Sessions Judge, Sirsa, was wrongly declined vide order dated 16.05.2022 (Annexure P-4). It is contended by learned counsel for the petitioner that the total custody of petitioner in the present case is one year and six days, as on 18.03.2023. It is further contended that no other case is pending against the petitioner. Learned counsel states that the investigation of case is complete, challan stands submitted on 06.06.2022 and charges have also been framed on 18.10.2022. It is stated that no prosecution witness has been examined so far and conclusion of trial is likely to take some time. By referring to Annexures P-5 and P-6, learned counsel for the petitioner submits that the co-accused in this case, namely Nanak and Sunil @ Rinku, have already

been granted regular bail. Learned counsel submits that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail is made.

Learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness of the offences, however, it is fairly conceded by learned State counsel that as per custody certificate, the total custody of petitioner is one year and six days, as on 18.03.2023, and the petitioner is not involved in any other case. It is not disputed that the investigation in this case is complete, challan stands submitted, charges have been framed and no prosecution witness has been examined in the present case, by now. It is also not disputed that co-accused namely Nanak and Sunil @ Rinku, have been granted the concession of regular bail.

I have heard learned counsel for the parties and perused the paper book as well as the status report and custody certificate of petitioner handed over by learned State counsel in Court today.

Petitioner is a young boy of 20 years of age. As per custody certificate dated 18.03.2023, the petitioner has already undergone one year and six days of custody (as on 18.03.2023). According to the status report, offence under Section 25 of the Arms Act has been deleted in this case. Investigation in this case is complete, challan stands presented on 06.06.2022 and even charges have been framed on 18.10.2022. No prosecution witness has been examined by now, hence, trial in the case is likely to take long time and no useful purpose would be served by keeping the petitioner behind bars for an indefinite period of time. Further, the co-accused, namely Nanak and Sunil @ Rinku, have been granted the

concession of regular bail.

Keeping in view the aforementioned circumstances, the instant petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity.

Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

The petition is accordingly disposed of.

22.03.2023
Apurva

(HARSH BUNGER)
JUDGE

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