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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.30168 of 2022 (O&M)

Date of Decision: 27.03.2023

Davender Kumar @ Mona

..... Petitioner

V/s.

State of Haryana and Another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vikash Bishnoi, Advocate
for the petitioner-applicant.

Ms. Nidhi Garg, AAG, Haryana.

JASGURPREET SINGH PURI, J (Oral)

The present is a third petition filed under Section 439 of the Code of Criminal Procedure, for grant of regular bail to the petitioner in FIR No.238 dated 07.07.2020, under Section 346, IPC (Sections 328, 364, 302, 201,34 of IPC, 1860, added later on), thereafter Section 346, IPC, has been deleted, registered at Police Station Sadar Fatehabad, District Fatehabad.

It has been submitted by the learned counsel for the petitioner that this is the third bail petition as the earlier petition was dismissed as withdrawn since, at that point of time, the material witnesses were not examined. He submitted that now all the material witnesses have been examined and even the complainant has been examined who has not supported the prosecution version and has been declared hostile (Annexure P-5). He submitted that now the petitioner had faced incarceration for about 02 years and 06 months and is in custody since October, 2020 and the other co-accused who is the father of the petitioner has already been extended the benefit of bail by this Court in CRM-M-60337-2022 decided on 06.01.2023 and the petitioner is at parity with the aforesaid co-accused.

He further submitted that the petitioner is not involved in any other case and is having clean antecedents and therefore, considering the aforesaid facts and circumstances, he may also be considered for grant of regular bail.

On the other hand, learned State counsel has stated that it is correct that the petitioner is in custody since October, 2020 which comes out to be about 02 years and 06 months and the material witnesses have been examined including the complainant, however one of the witnesses who is the father of the deceased is yet to be examined. So far as the grant of bail to the other co-accused namely Hanuman is concerned, the petitioner is at parity with the aforesaid co-accused. So far as the involvement of the petitioner in other case is concerned, it is submitted on instructions, that he is not involved in any other case. She has however opposed the grant of bail to the petitioner on the ground that the matter was serious in nature and one material witness is yet to be examined.

I have heard learned counsel for the parties.

It is a case where the petitioner had already faced incarceration of about 02 years and 06 months. The other co-accused namely Hanuman, is concerned, who is the father of the petitioner, he has already been extended the benefit of bail by this Court. The FIR was lodged on the basis of allegations made by the complainant that his wife had gone missing and none of the accused were named in the FIR. It was only on the basis of the supplementary statement suffered thereafter that they were named. Now the other co-accused who is the father of the petitioner has been granted the benefit of bail by this Court.

As per learned counsel for the parties, the petitioner is having clean antecedents and is not involved in any other case. The complainant has not supported the prosecution version and has been declared as hostile (Annexure P-5).

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In view of the aforesaid facts and circumstances of the case, particularly considering the long custody of the petitioner and the fact that the other co-accused has been extended the benefit of bail, this Court deems it fit and proper to grant regular bail to the petitioner.

Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned, if not required in any other case.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

27th March, 2023

Sonia Puri

**(JASGUPREET SINGH PURI)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No