

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

211**CRM-M-33009-2022****Date of Decision: 28.03.2023**

Shamsher alias Pardhan alias Lalu

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Vikas Bishnoi, Advocate
for the petitioner.

Mr. Karan Sharma, D.A.G. Haryana.

GURBIR SINGH, J.(ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.795 dated 01.11.2021 under Sections 398, 401, 115, 120-B IPC, Section 25(1-B)(a) of Arms Act, 1959 and Section 42 of Prison Act registered at Police Station City Hansi, District Hisar.

2. In brief, case of the prosecution is that on 31.10.2021, a secret information was imparted to the police party that three boys with illegal weapons and torch were standing near the flats of Kundanpur Dhani Road, with an intention to rob the passersby and if a raid is conducted they could be apprehended. A Police Party, reached at the spot and found three boys standing there. One of the boys having a torch and weapon signalled the police vehicle to stop. All the three boys encircled the police vehicle and asked them to come out of the vehicle and hand over all the valuables in their possession. On seeing the police, the said boys tried to run away. They

were apprehended. One country made pistol with a cartridge was recovered from one of them. Two country made pistols of .315 bore with 10 live cartridges were recovered from his bag. One .315 bore country made pistol and four live cartridges were recovered from the second accused. One .315 bore country made pistol and four live cartridges were recovered from third accused. A case was registered. During investigation, accused suffered disclosure statements and offence was enhanced. The name of the petitioner surfaced during the disclosure statement. Allegations against the petitioner are that he arranged fire arms for the co-accused, no recovery is effected from him.

3. Learned counsel for the petitioner has submitted that the petitioner was neither named in the FIR nor arrested at the spot. At the time of occurrence, he was in judicial custody. His production was sought for 15.11.2021. Co-accused Devender @ Sagar, Rajesh @ Pokar, Ajay @ Riski, Ashok and Sumit have already been granted concession of regular bail. Their names also surfaced on the disclosure statements. The petitioner is only implicated in the instant case due to registration of cases against him. The petitioner has already been acquitted in 15 cases. In one case, he was convicted and ordered to undergo imprisonment already undergone by him and three cases are pending trial.

4. Ld. State counsel has opposed the petition. He has placed on file the custody certificate and fairly admitted that the petitioner is in custody since 15.11.2021 and has already undergone 01 year, 03 month and 17 days in this case. The petitioner is habitual offender. 22 other cases have already been registered against him. He has already been convicted under Section 302 IPC and has been awarded life imprisonment. He will misuse

the concession of bail as he committed many offences while on bail in other cases.

5. Heard.

6. The petitioner has been in custody in this case for the last 01 year, 03 months and 17 days. He is not named in the FIR. In this FIR, he was named only on the basis of the disclosure statement made by the co-accused. It is debatable of statement made by the co-accused while in custody is admissible in evidence or not. The completion of trial will take long time. Although, many cases have been registered against the petitioner but he is already acquitted in 15 cases. The pendency of other cases is no ground to refuse the bail to the petitioner in the instant case.

7. Accordingly, without commenting upon the merits of the case, the present petition is allowed and the petitioner is directed to be released on regular bail, on his furnishing bail bonds/ surety bonds, to the satisfaction of learned trial Court/ Duty Magistrate, concerned.

8. However, nothing contained herein above shall be construed as an expression of opinion on the merits of the case.

(GURBIR SINGH)
JUDGE

28.03.2023
Satyawar

1. Whether speaking/reasoned: Yes/No

2. Whether reportable: Yes/No