

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33597-2023
DECIDED ON: 20.07.2023

LAKHWINDER @ LAKHU

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Baljeet Nain, Advocate
for the petitioner.

Mr. Sandeep Singh Maan, Addl. AG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C., seeking regular bail in FIR No.09, dated 07.01.2023, under Sections 307, 387, 34, of IPC and Section 25 of Arms Act (Sections 201, 120-B of IPC added later on), registered at Police Station City Tohana, District Fatehabad.
2. Learned counsel for the petitioner contends that as per the allegations, as is evident from the FIR and revealed during the course of investigation, the petitioner was not present at the alleged place of occurrence, as is clearly evident from examination of CCTV footage installed at that place. The only allegation against the petitioner has come forth is that he hatched a criminal conspiracy with other three persons.
3. On the other aspect that the accused persons ran away on a motorcycle, counsel for the petitioner vehemently contends that since he was not present at the place of occurrence, the question of his running from the site does not arise and even the said vehicle was neither in his possession nor he is the owner of the same.

vehicle, which has been effected by the police from other co-accused persons and in this way, the petitioner has not attributed any active role in the commissioning of the offence.

5. Further folding his arguments, learned counsel for the petitioner submits that all the other co-accused persons namely Sunil Kumar, Dheeraj and Krishan @ Boxer have already been granted the concession of regular bail vide orders dated 10.03.2023, 01.05.2023 and 26.05.2023 passed in CRM-M-10962-2023, CRM-M-15737-2023 and CRM-M-25882-2023 respectively by this Court.

6. Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. Though, he could not controvert the fact of grant of bail to the other co-accused persons. He asserts that the petitioner was instrumental in hatching the criminal conspiracy that is why Section 120-B has been attracted. He asserts that petitioner is involved in other cases, which shows that he is a habitual offender, therefore, he does not deserve the concession of regular bail at least at this stage.

7. He also submits before this Court that as far as the assertion of the counsel for the petitioner is concerned with regard to the role of the petitioner he was not present at the alleged occurrence, this is a matter of evidence to be examined by the trial Court, which cannot be of any benefit at this stage, while considering the regular bail.

8. Having heard learned counsel for the respective parties.

9. Be that as it may, this Court is of the considered view that in the light of the fact, wherein all other co-accused persons have already been granted the concession of regular bail, who have played their active role in the commissioning of offence and were armed with weapons, which have been recovered including the vehicle i.e., motorcycle used by the assailants in running away from the said place

required for custodial interrogation, as he is in custody for the last 5 months, 17 days, as is evident from the custody certificate, which is produced by the State counsel today in the Court apart from the fact that trial is likely to take long time, wherein, no prosecution witness has been examined so far out of total 36, no useful purpose would be served by keeping the petitioner behind the bars.

10. As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as ***“Baljinder Singh alias Rock vs. State of Punjab”*** decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would lend the petitioner in a situation of denial the concession of bail.

11. In light of the above, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

12. The present petition is, hereby, allowed.

13. However, it is made clear that any observation made hereinabove, shall not be construed as an expression of opinion on the merits of the case.

(SANDEEP MOUDGIL)
JUDGE

20.07.2023

Meenu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No