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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-38269-2023 (O&M)

Date of decision: August 17, 2023

Ragib Ali

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Pardeep Panwar, Advocate for petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner, before this Court seekshis release as undertrial in a case bearing FIR No.177 dated 17.04.2023, registered under Sections 323, 342, 377, 379-B, 387, 506 read with Section 34of the Indian Penal Code, 1860 (for short 'IPC'), at Police Station, Ganaur, District Sonipat.

2. As per the prosecution's version, on April 16, 2023, Sarfraj received a call at around 6:30 a.m. from Gaffar to discuss some work. Subsequently, the complainant, namely Taslim, and Sarfraj arrived on a motorcycle under the Garhi Kalan Bridge in Ganaur at approximately 3:00 p.m. Gaffar, who operates a hotel at DICT Chowk, met them beneath the bridge. Gaffar had Sarfraj sit on his motorcycle, while Sarfraj remained on his own motorcycle. After covering some distance, near a liquor vend, Sakil joined them, and Sarfraj asked Sakil to join him on his motorcycle. The group of four proceeded to a room located in a field.Later, Gaffar left the complainant, Sarfraj, and Sakil in the mentioned room and departed to fetch other individuals. After a period of time, Gaffar returned with unidentified individuals. They entered the room and restrained Sarfraj and Sakil by tying their hands and legs. The assailants subjected them to physical abuse using a stick (Danda) and a cable wire. During the incident, Sakil and Gaffar seized Sarfraj's mobile phone (a VIVO make) and cash amounting to Rs. 3,500/-, while Sarfraj had a silver chain and Rs. 5,000/- in cash taken from him.At this point, Parvesh arrived, and they proceeded to strip Sarfraj. They also subjected him to further violence, including

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inserting a baton into his private area (anus). Gaffar's brother, Sattar, also arrived at the scene, and Sarfraj had become unconscious by then. Sattar lifted Sarfraj, and his accomplices continued to assault him. Subsequently, the assailants demanded a ransom of Rs. 2 lakh. They also used Sarfraj's mobile phone to call his nephew, Riyasat, and demanded a ransom, threatening to kill both him and Sarfraj if their demands were not met. After some time, they left the room and fled. An FIR was registered. During investigation, petitioner was arrested on 18.04.2023 and is in custody since then.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated on the basis of disclosure statement of co-accused, namely Safiq. He submits that petitioner was not named in the FIR. Allegedly, only a rope was recovered from the petitioner, which too is a planted one. No specific injury or any other role has been attributed to the petitioner.

3.1. Learned counsel further urges that nothing is to be recovered from the petitioner and no useful purpose would be served by keeping him behind bars. Petitioner is not involved in any other case.

3.2. Learned counsel for petitioner further argues that similarly placed co-accused Mohd. Sattar was granted the concession of bail by learned trial Court vide order dated 12.07.2023 (Annexure P-3).

4. On the other hand, learned State counsel opposes the petition and submits that petitioner has committed a serious offence. If enlarged on bail, there is every likelihood that he will commit similar offence and/or will flee from trial, and he might tamper with evidence or influence/ intimidate the witnesses.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

6. On previous hearing, vide order dated 10.08.2023, this Court had asked the prosecution to file a report *qua* role attributed to the petitioner vis-à-vis Section 377 of IPC. On resumed hearing today, learned State counsel submits that due to paucity of time, report could not be filed. However, on a Court query, he submits under instructions from SI Satbir Singh that petitioner has not been attributed role of any overt or covert act

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so as to attract ingredients of Section 377 IPC against him. Role attributed to the petitioner is that of having been found in possession of a rope, which is stated to have been used to tie the hands of the victim.

7. On further Court query, learned State counsel submits that challan has already been presented, but charges are not framed yet. Investigation *qua* petitioner is complete, he is thus not required for custodial interrogation. Out of total 20 witnesses, none have been examined since charges are yet to be framed. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against petitioner are a matter of trial at this stage. Whereas, petitioner has already been languishing in jail for the past around 4 months in preventive custody, being behind bars since 18.04.2023.

8. Petitioner is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/or influence witnesses. There is no probability of tampering with evidence as the same has already been seized by the investigating agency.

9. It is stated that petitioner is a family man having fixed abode and clean antecedents. It is unlikely that he poses any flight risk and/or will flee from trial proceedings. It is further stated that petitioner has already lost his livelihood due to incarceration in the present case and his further custody will permanently render him jobless for rest of his life.

10. Co-accused of the petitioner has already been granted bail by this Court. Role attributed to petitioner appears to be at par with his co-accused. In the premise, I see no ground as to why petitioner should not be meted out with similar treatment.

11. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.

12. Accordingly, petitioner is ordered to be released on bail, in case not required in any other case, on his furnishing bail bonds and surety bonds to the

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satisfaction of learned trial Court, where his case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

13. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for limited purpose of bail hearing alone and learned trial Court shall proceed without being influenced with this order.

14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 17, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No