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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: August 10, 2023

Sukhwinder Singh @ Judge

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Ashish Aggarwal, Advocate for petitioner.

Ms. Guramrit Kaur, DAG Punjab.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner before this Court seeks his release as undertrial in criminal case bearing FIR No.105 dated 13.08.2022, registered under Sections 379-B read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') (Sections 411 and 201 of IPC added later on), at Police Station, C Division, District Amritsar City.

2. Per prosecution version, on 13.08.2022 at about 5:30 p.m., complainant-Vani Sharma was returning home, two unidentified goons came on a bullet motorcycle and snatched her Samsung Galaxy M-21 mobile phone and fled away from the spot. An FIR was registered. During investigation, petitioner was arrested on 13.01.2023 and bullet motorcycle used in the commission of crime was recovered from his possession. Petitioner has been in custody since then.

3. Learned counsel for petitioner submits that as per prosecution case, it was on 13.01.2013, after 5 months of alleged occurrence, ASI Paljinder Singh received a secret information and he then suddenly apprehended the petitioner. Petitioner has clearly been falsely implicated. He further submits no proper test identification parade was got conducted. Complainant did not identify the petitioner in the presence of Magistrate, therefore, question with regard to identity of the petitioner in commission of alleged

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offence is debatable. He further urges that alleged recovery of mobile phone was not effected from the petitioner.

4. On the other hand, learned State counsel, on instructions from ASI Paljinder Singh, opposes the bail petition. She submits that petitioner has committed the serious offence. If enlarged on bail in present case, petitioner may tamper with the evidence and/ or influence the witnesses. She however, admits that there is no other case pending against the petitioner. Learned State counsel further points out that even the complainant while appearing in the witness-box did not support the prosecution version.

4.1. At this stage, learned counsel for petitioner contends that in any case, since complainant herself has turned hostile, in all likelihood, the trial will result in acquittal of the petitioner.

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

6. Challan was filed and charges were framed on 05.06.2023. Trial has since commenced, petitioner is thus not required for any further custodial interrogation. Moreover, it transpires that complainant has also retracted from her earlier statement given to the police. She has not supported the prosecution version. Being so, there seems likelihood of trial resulting in acquittal of the petitioner.

7. That apart, 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. On a Court query, learned State counsel informs that out of 12 witnesses, 9 have been examined so far. Conclusion of trial is still likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for the past about 7 months in preventive custody, being behind bars since 13.01.2023.

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. It is stated that petitioner is a 42-year old person and is a shopkeeper by profession, and has family to look after. Being a family man having responsibilities, clean

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antecedents and fixed abode, it is unlikely that he poses any flight risk and/or will flee from the trial proceedings.

9. 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.

10. 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 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.

11. In case, petitioner is found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.

12. 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.

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

(ARUN MONGA)
JUDGE

August 10, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No