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2023:PHHC:117580

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-39051-2023 (O&M)
DECIDED ON: 6th SEPTEMBER, 2023

SOURAV @ SWAMI

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Ritesh Pandey, Advocate for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

CRM-37577-2023

Application is allowed as prayed for.

Annexure P-5 is taken on record subject to all just exceptions.

CRM-M-39051-2023

1. The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked 2nd time for the grant of regular bail to the petitioner in FIR No. 81, dated 02.09.2022, under Section 365, 34 IPC (Sections 302, 307, 148, 149 and 120-B IPC added later on and Section 34 IPC deleted) registered at Police Station Sadar Pathankot, District Pathankot.

2. Learned counsel for the petitioner contends that the name of the petitioner has been nominated merely on the basis of disclosure statement made by other co-accused namely Mohit Kumar, while in police

custody and on that basis, petitioner was subsequently arrested. Though, there is no allegation or even mentioning of his name in the FIR or in the supplementary statement given by the complainant in whatsoever manner. He further argues that no specific role has been attributed to the petitioner as of Mohit Kumar on whose disclosure statement, the petitioner has been nominated as an accused, who has already been granted the concession of regular bail by this Court vide order dated 10.02.2023 passed in CRM-M-6259-2023. He further submits that charges have been framed in this case on 17.02.2023 and thereafter till today, no prosecution witness has been examined out of total 42 prosecution witnesses, which jeopardizes the right of the petitioner for speedy trial, as enshrined under Article 21 of the Constitution of India.

3. Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He asserts that its a case, where a person was kidnapped and thereafter killed, which finally resulted into addition of Section 302 IPC in the FIR and the petitioner has been nominated by his co-accused namely Mohit Kumar.

4. Be that as it may apart from the assertion, no incriminating material or any specific role has been attributed to the petitioner, neither the same has been put forth before this Court, even from the disclosure statement made by Mohit Kumar as against the admitted fact, he was not named in the FIR as well as supplementary statement, which got recorded by the complainant. There is no doubt that though a person has died, but since no specific role has been attributed and the petitioner has been nominated merely on the basis of disclosure statement of Mohit Kumar,

who already stands granted the concession of regular bail, while he was in police custody cannot be taken as absolute piece of evidence at this stage for rejecting the bail at least apart from the fact that the petitioner also seems to be a person of clean antecedents, as is evident from the custody certificate, who is not involved in any other case.

5. Considering the fact that out of total 42 witnesses, none has been examined so far, after framing the charges on 17.02.2023 meaning thereby the trial is likely to take long time, the petitioner cannot be kept behind the bars for an indefinite period, wherein bail is a rule and jail is an exception and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of Constitution of India, as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in *Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131*.

6. 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 trial Court/Duty Magistrate, concerned.

7. The present petition is, hereby, allowed.

8. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

(SANDEEP MOUDGIL)
JUDGE

6th SEPTEMBER, 2023

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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No