

2023:PHHC:128488

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

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**CRM M-40160 of 2023
Date of Decision: 04.10.2023**

Shan @ Shaan

...Petitioner

Vs.

State of U.T. Chandigarh and
another

...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Subhash Kumar, Advocate, for the petitioner.

Mr. Anupam Bansal, Addl. P.P. for U.T., Chandigarh.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the instant petition under Section 439 of the Cr.P.C. with a prayer to grant a regular bail in case FIR No.160 dated 13.06.2012 registered under Sections 324, 392, 394, 506, 411 and 34 IPC at Police Station Sector 36, Chandigarh.

2. Learned counsel for the petitioner contends that the FIR in the present case was registered on 13.06.2012 and he was granted the concession of bail by the Court on 27 July, 2012. Thereafter, the petitioner and other co-accused started appearing before the trial Court. However, during the course of trial, the petitioner absented and was declared as a proclaimed offender on 27.01.2017. He further contends that the petitioner was arrested in the present case on 27.01.2023 and is in custody for the last more than 08 months. He next contends that his co-accused Tun Tun Gupta and Chhotu Kumar

have already been acquitted by the Court of Ms. Nisha, Judicial Magistrate 1st Class, Chandigarh vide judgment dated 27.01.2017. He further contends that the prosecution has relied upon the same set of evidence against him as well and even the chances of his conviction are bleak. Thus, his custody will not serve any meaningful purpose.

3. On the other hand, learned State counsel has vehemently opposed the prayer made by the learned counsel for the petitioner that the petitioner is a habitual offender. Apart from that, he was declared as proclaimed offender on 27.01.2017 and has been arrested by the police in the present case after 06 years, i.e. on 22.01.2023. He further contends that there is a reasonable apprehension that the petitioner may again evade the process of law.

4. I have heard learned counsel for the parties and perused the record.

5. It is not in dispute that his two co-accused, namely, Tun Tun Gupta and Chhotu Kumar have already been acquitted by the trial Court vide judgment dated 27.01.2017. Apart from that, the petitioner is in custody since 22.01.2023 and the trial Court may take considerable time in concluding the trial proceedings. Apart from that, the apprehensions expressed by the learned State counsel can be allayed by imposing stringent conditions on the present petitioner

while granting him the concession of regular bail under Section 439 Cr.P.C.

6. Without commenting any further on the merits, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned subject to the following conditions:-

(i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.

(ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.

(iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.

(iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.

(v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.

(vi) In case, the petitioner involved in any other criminal activity, during the pendency of the trial, it shall be viewed seriously and the prosecution shall be at liberty to move an appropriate application for cancellation of bail granted to the present petitioner.

(vii) The concerned Court may insist on furnishing bail bonds in the sum of Rs. 1 lac each with two local surties in the like amount and may also impose any other condition, in accordance with law, while accepting the bails bonds and surety bonds of the petitioner.

(viii) The petitioner shall report every 1st and 3rd Monday in English calander month before the concerned SHO till the conclusion of the trial and SHO shall mark his presence by making an entry in the Rojnamcha. In case, he does not report on every 1st and 3rd Monday before the concerned SHO, it shall be viewed seriously and the concession granted to him shall be liable to be cancelled and the State of U.T. Chandigarh shall be at liberty to move an appropriate application in this regard.

04.10.2023

amit rana

(N.S.SHEKHAWAT)

JUDGE

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