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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-39913-2023 (O&M)
Date of decision: 22.08.2023

BAJRANG

...Petitioner

VERSUS

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Shailender Kashyap, Advocate and
Mr. Parshant Sethi, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.421 dated 30.10.2020, under Section 365 of the IPC (Sections 364, 302, 201, 148, 149 and 120-B of the IPC added later on), registered at Police Station Adampur, District Hisar, Haryana.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody from 30.10.2020, which is almost 2 years and 10 months and five witnesses including the material witnesses have already been examined. He further submitted that it is a case which is based upon circumstantial evidence and two eye-witnesses, namely, Aakash and Ajmal had stated that the deceased,

namely, Deepak alias Bachhi was taken away by some unknown persons. Later on, the dead body of the aforesaid deceased was found in a pit. He further submitted that the entire case is based upon circumstantial evidence and one of the person, namely, Arun Kumar, who was named by the aforesaid two eye-witnesses has already been extended the benefit of regular bail by this Court vide Annexure P-7 on 04.07.2023. He further submitted that so far as the present petitioner is concerned, as per the prosecution, from his demarcation, the body was discovered but he submitted that he was already in custody and proper procedure was not followed before allegedly taking the petitioner to the site for recovery of the body. He referred to a judgment passed by Hon'ble Supreme Court in *Subramanya versus State of Karnataka, Criminal Appeal No.242 of 2022*, decided on 13.10.2022 to contend that even when the discovery in pursuance to the statement made under Section 27 of the Evidence Act is admissible in evidence but a procedure has to be followed in the form of a discovery panchnama, which has to be examined in two phases but none of the phases has been satisfied and the petitioner has been implicated only because he was earlier involved in four more cases. He further submitted that be that as it may, the aforesaid two eye-witnesses have already been examined and they have not supported the prosecution version and they have been declared hostile and therefore the entire case is now based upon circumstantial evidence but the petitioner has faced incarceration for about 2 years and 10 months and he may be considered for grant of regular bail.

3. On the other hand, Ms. Harpreet Kaur, AAG, Haryana has submitted that so far as the custody part of the present petitioner is concerned,

the same is correct. However, she has opposed the grant of regular bail to the petitioner on the ground that the discovery of body was effected on the basis of statement and demarcation made by the petitioner in the presence of a Tehsildar and, therefore, it cannot be said that proper procedure was not followed. She further submitted that so far as the parity of the petitioner with the other co-accused, namely Arun Kumar, who has been extended the benefit of regular bail by this Court is concerned, the petitioner is not at parity with the aforesaid co-accused.

4. I have heard the learned counsel for the parties.

5. The petitioner is stated to be in custody from 30.10.2020, which is almost 2 years and 10 months. The FIR was registered on the basis of statement of two persons, who have not supported the prosecution version at the time of declaration before the Court. The other co-accused, namely, Arun Kumar has already been extended the benefit of regular bail by this Court as aforesaid. Although, the exact parity with the aforesaid co-accused may not be there but considering the aforesaid totality and circumstances of the present case, wherein the petitioner has already faced incarceration for about 2 years and 10 months and only five witnesses have been examined, who are stated to be material witnesses and the eye-witnesses to the story have not supported the prosecution version, this Court is of the view that the present petitioner deserves the concession of regular bail. Furthermore, it is not the case of the learned State counsel that in case the petitioner is released on bail, then he may influence any witness or may tamper with evidence or may flee from justice.

7. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.
8. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petition only.

22.08.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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