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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-40084-2023 (O&M)

Date of decision:23.08.2023

Deepak @ Dhoni

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Naveen Bawa, Advocate
for the petitioner.

Mr. Karan Garg, AAG, Haryana.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.156 dated 04.05.2019, registered under Sections 120-B, 302, 201 read with Section 34 of IPC and Section 25 of Arms Act at Police Station, Kundli, District Sonapat.

2. FIR was registered on the statement of complainant Anup Garg. He stated that he is running a brick kiln. Islam along with his wife Afsana and their children and petitioner Deepak along with his parents and Mustak along with his brother were residing in his brick kiln area for the last one year and they and were working at the brick kiln. Rumour was that Afsana wife of Islam were having illicit relations with Deepak (petitioner herein) as well as Mustak. He further stated that on 03.05.2019, both Deepak and Mustak along with Islam left the brick kiln at about 9.30 pm on a motorcycle. On the next day, complainant came to know Islam has been killed and his body and motorcycle were thrown in canal. Later, dead body of Islam as well as motorcycle was recovered on 04.05.2019 from a canal near village Malla Majra. Petitioner was arrested as a suspect on 26.06.2019 and has been in custody ever since.

3. Learned counsel for petitioner submits that there is no eyewitness to the alleged occurrence. Complainant has not supported the prosecution version. He submits that based on self-incriminating custodial statement of the petitioner, he is being prosecuted, which is not *per se* admissible. He relies on testimony of complainant Anup

Garg contained at Annexure P-2. Petitioner has been falsely implicated. He further submits that nothing is to be recovered from the petitioner and he is not required for further custodial interrogation.

3.1 Furthermore, he points out that co-accused of the petitioner, namely Mustak has already been granted bail by a co-ordinate Bench of this Court vide order dated 14.10.2021 (Annexure P-3), though petitioner's case stands on much better footing, and yet, he continues to be in jail, he contends. He also argues that on the ground of parity alone, petitioner is entitled to be released on bail during pendency of trial.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. He however, admits that no other case is pending against him.

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

6. On a Court query, under instructions from ASI Kanwar Bhan, learned State counsel submits that challan was presented and charges were framed on 06.01.2020. Investigation is thus complete *qua* petitioner, he is not required for custodial interrogation. Allegations against petitioner are a matter of trial at this stage. There are 23 prosecution witnesses, out of them 16 have been examined and 7 witnesses are left and next date before learned Court below is 08.09.2023. Conclusion of the trial is likely to take quite some time.

7. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been languishing in jail more than 04 years and 01 month in preventive custody, he being behind bars since 26.06.2019. He 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.

8. Petitioner is stated to be married, 35-year old person having one minor child and wife, who are all dependent on him. He is the only breadwinner of his family. Being a married person with family responsibilities, clean antecedents and fixed abode, he poses no flight risk and is not a threat to society in any way.
9. Co-accused/Mustak has been granted concession of bail by this court vide order dated 14.10.2021 (Annexure P-3).
10. 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.
11. Accordingly, petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of Ld. 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.
12. 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.
13. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition 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

23.08.2023
vandana

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