

CRM-M-44665-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-44665-2023 (O&M)****Date of decision: September 15, 2023**

Hitesh @ Happy

....Petitioner

versus

State of Haryana

....Respondent

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

Mr. Vikas Bhardwaj, 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.75 dated 05.07.2022, registered under Sections 120-B, 201, 307, 323, 326-A, 148 read with Section 149 of the Indian Penal Code, 1860 (for short 'IPC'), at Police Station, City Kanina, District Mahendergarh.

2. Per prosecution version, complainant Ankit stated that on 01.07.2022, he and his friend Deepak @ Sonu had consumed liquor and were sitting in open on the ground when four boys descended on the scene on two motor cycles. They were wielding two bottles of petrol. One of them poured petrol on Ankit and another set him ablaze. The assailants decamped after that. One boy out of four was identified as co-accused, namely Manish alias Gola, while remaining assailants could be identified by Deepak. During investigation, statement of eyewitness Deepak was recorded by the police under Section 161 Cr.P.C. wherein he alleged that petitioner Hitesh alias Happy had opened the lid of the bottle containing petrol and poured the same on the injured while co-accused Yashu alias Yogesh set him on fire. Petitioner was arrested on 15.07.2022 and has been in custody ever since.

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3. Learned counsel for petitioner submits that petitioner was not named in the FIR. He was also not present at the place of incident. Petitioner has been implicated in this case on the basis of disclosure statement of co-accused, namely Manish, which is not per se admissible evidence. Even as per the disclosure, co-accused, Manish had left the petitioner behind bar Gaushala Chowk. Thus petitioner was not present at the crime scene. Learned counsel contends that FIR in question has been registered after a delay of 04 days without any explanation.

3.1. Learned counsel further argues that out of 11 accused, 4 have been granted bail by learned trial court vide orders dated 29.03.2023, 31.03.2023, 10.04.2023 (Annexures P-3 to P-6) while other 05 co-accused of the petitioner, have already been accorded concession of regular bail by this Court vide order dated 22.03.2023 (Annexure P-6) and vide order dated 09.08.2023 (Annexure P-7). Petitioner's case is at par with his co-accused who are on bail and yet he continues to languish 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.

3.2. Learned counsel submits that nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. He submits that there is an inordinate and unexplained delay in registration the FIR as the occurrence described by the complainant was of 01.07.2022, whereas the FIR was registered on 05.07.2022.

4. On the other hand, learned State counsel, opposes the bail petition. He submits that petitioner has committed a serious offence. If released on bail, there is likelihood of petitioner fleeing from trial proceedings and/or tampering with evidence and influencing witnesses. He further submits that the motorcycle bearing registration No.HR-82/4686, which was used in the alleged crime, was recovered from the possession of petitioner. He further submits that petitioner is involved in another case under Section 160 IPC, but he is on bail in that case.

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

6. On a Court query, learned State counsel, under instructions from SI Rajender Kumar submits that challan was presented on 29.09.2022 and charges were framed on 01.12.2022. Investigation is thus complete *qua* petitioner, he is not required for custodial interrogation. 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. Out of total 18 witnesses, only 01 has 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 more than 01 year and 2 months, being behind bars since 15.07.2022.

7. 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. There is no probability of tampering with evidence as the same has already been seized by the investigating agency.

8. It is stated that petitioner is a family person having old aged parents to look after along with one younger brother, who are living in sheer penury in his absence. Being family man and having a fixed abode, it is unlikely that petitioner poses any flight risk and/or will flee from trial proceedings.

9. Co-accused of petitioner have been accorded the concession of bail, as aforesaid.

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, 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.

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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

September 15, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No