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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-47147-2022 (O&M)

Date of decision: July 13, 2023

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....Petitioner

versus

State of Haryana

....Respondent

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

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (ORAL)

Petitioner, seeks bail in criminal case bearing FIR No.393 dated 08.11.2017, registered under Sections 392, 342, 506 of the Indian Penal Code, 1860 (for short 'IPC') and Section 25 of Arms Act (Section 397/34 IPC added later on), at Police Station City Tohana, District Fatehabad.

2. Per First Information Report (FIR), on 08.11.2017, Rupali (complainant) wife of Harvilas stated that at about 02:30 p.m., when she was alone at home as husband was away for work at his shop in *anaj mandi* (grain market) and her children were in school, three young boys came at her house and enquired about key of the locker at home. On her refusal, they put a knife on her neck and threatened to kill her. One of the accused was even wielding a pistol. Complainant was then latched her in the bathroom and, all the accused looted Rs.30,00,000/- from the drawer of an almirah from the residence. When her family members arrived, they rescued her from bathroom. An FIR was registered. Petitioner was since already in custody since 30.11.2018 in another case, he joined investigation and from his disclosure statement, Rs.2,00,000/- was recovered from his residence. In the present case, petitioner's formal arrest was caused on 05.12.2018.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. Petitioner has not committed any alleged offence. Petitioner was also not named in the FIR and has been nominated in this case on the basis of disclosure

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statement of co-accused Aman Kumar @ Sonu. Nothing has been recovered from the petitioner and alleged recovery of Rs.2,00,000/- has been planted upon him just to shield the real culprits. Co-accused of the petitioner have already been granted concession of bail vide order dated 30.01.2019 in CRM-M-400-2019 by co-ordinate Bench of this Court.

4. On the other hand, learned State counsel, on instructions from ASI Gopal Dass opposes the bail petition. He submits that petitioner has committed a serious offence. Petitioner is involved in 4 more FIRs. Petitioner was arrested on 05.12.2018. He further contends that there is every likelihood that after being released on regular bail, petitioner may evade from process of law, intimidate the witnesses and being a habitual offender, may again remain involved in such type of crimes.

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

6. Charges in trial court were framed on 20.01.2023. Out of total 37 prosecution witnesses, none is stated to have been examined so far. Since trial has commenced, petitioner is not required for custodial interrogation and is being kept in judicial custody only on an unfounded suspicion of tampering with the evidence and/or influencing the witnesses. Co-accused of the petitioner has already been granted bail vide order dated 30.01.2019 by co-ordinate Bench of this Court. I am of the view that in the present case petitioner deserves to be released on bail on the ground of parity. One of the fundamental principles of bail is the presumption of innocence. One is innocent until proven guilty in a court of law.

7. In the instant case, trial is likely to take long time. Whereas, petitioner has already been languishing in jail for the past more than 4 years in preventive custody, he being behind bars since 05.12.2018. The maximum punishment prescribed for the offence under Section 392 IPC is 10 years' rigorous imprisonment. It is stated that petitioner is 32-year old and has family to look after.

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8. 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.
9. Accordingly, petitioner is ordered to be released on bail 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.
10. 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.
11. 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.
12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 13, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No