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222 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-51887-2021 (O&M)

Date of decision : 23.11.2023

Ayub

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present : Mr. Mohak Arora, Advocate, for
Mr. Manish Soni, Advocate, for the petitioner.

Mr. Ashok Singh Chaudhry, Addl. A.G., Haryana.

Mr. Joginder Pal Ratra, Sr. DAG, Punjab.

Mr. Manish Bansal, Public Prosecutor, U.T., Chandigarh.

Mr. A.S.Virk, Advocate as Amicus Curiae.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of bail pending trial to the petitioner in FIR No.82 dated 18.03.2013, under Sections 353, 186 and 307 read with Section 34 of Indian Penal Code, 1860, and Section 25 of the Arms Act, 1959, registered at Police Station DLF Qutab Enclave, District Gurugram.

2. Above FIR was registered on the statement of one EASI Narender Singh with the allegations that petitioner along with his companions fired gun shots upon police party with an intention to kill and one of the shots hit him on the thigh and leg.

3. It transpires that petitioner was granted interim bail by the then Coordinate Bench on 20.03.2023 in view of the fact that he has already

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remained in custody for a period of 4 years and 2 months. Relevant part of the same is recapitulated as under:-

“Prayer in the 3rd petition and the 2nd petition is for grant of regular bail to the petitioners namely Ayub and Pappi @ Papu, respectively in FIR No.82 dated 18.03.2013 registered under Sections 353, 186, 307 read with Section 34 IPC and 25 of the Arms Act, at Police Station DLF Qutab Enclave, District Gurugram.

The new ground for filing this petition is that the custody of the petitioners is more than 04 years and till date, not even a single witness of the prosecution has been examined.

A report was called from the trial Court/Additional Sessions Judge, Gurugram, who has stated in his report dated 14.03.2023 that the charges were framed on 12.03.2020 and thereafter, the case was adjourned number of time for recording the prosecution evidence, however, the petitioners Puppy @ Papu and Ayub, who are lodged in Faridabad Jail or Rajasthan Jail, were not produced on video conferencing on the pretext by the Superintendent of Jail that there is a connectivity issue on the video conferencing and for a period of 04 years till date, not even a single PW has been examined before the trial Court.

Brief facts of the case are that the FIR was registered on a complaint given by ASI Narinder Singh that on 18.03.2013 at around 07:13 PM, he was on duty on the main road when he noticed a motorcycle coming from the Delhi side and he stopped the motorcycle and removed the keys of the same and asked the rider of the motorcycle to park the same on the road side and show the documents of the motorcycle. On this, they refused to show the documents to the said police official and the complainant entered into a verbal altercation with them and in the meantime, one boy took out a pistol and fired upon him, however, the bullet hit on the road. The complainant caught hold of the boy and thereafter, the second boy also fired and the pellets injured his leg and he fell down. Thereafter, the said boys ran away from the spot on their motorcycle. The complainant, thereafter sent an information to the Control Room and he was taken to the hospital and was medico legally examined.

Counsel for the petitioners have argued that initially the case on enquiry was found to be untraceable and a report was submitted before the Illaqa Magistrate, however in the year 2018, when the petitioner Pappi @

Papu was arrested in some other case, his statement was recorded and his further disclosure statement was recorded, on which the co-accused Ayub was implicated in this case and since then, they are in custody.

Counsel for the State has, however, opposed the prayer for bail on the ground that as per the Custody Certificates, both the petitioners are involved in number of cases in the States of Haryana and Rajasthan and therefore, they should not be granted the concession of bail.

*Be whatsoever, it is held by the Hon'ble Supreme Court in number of cases that mere pendency of number of cases will not be a ground to deny the bail especially in case where the custody is lying. In the instant case, both the petitioners are in custody for a period of more than 04 years and as per the report of the trial Court till date, not even a single PW including the complainant has been examined as majority of the time due to fault in the video conferencing connectivity, the accused could not be produced before the trial Court. Accordingly, in view of **"Satender Kumar Antil vs Central Bureau of Investigation and another"**, passed in SLP (Crl.) No.5191 of 2021, decided on 11.07.2020, the petitioners are directed to be released on interim bail subject to their furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaq Magistrate.*

List again on 12.05.2023.

However, noticing the fact that the complainant, who was a police official has stated that he was on Traffic duty and was present on the main road alone when he has tried to stop the motorcycle for checking the documents, upon which he had an altercation with the petitioners and the incident took place, let an affidavit of the Director General of Police, Haryana, Director General of Police, Punjab as well the Director General of Police, U.T., Chandigarh, be filed giving the following details:

- (a) The affidavit must define the duties of a police official, who is either present on a police barrier especially on the National Highway, whether they have power to check the documents of any of the vehicle plying thereon.***
- (b) It should also be stated where the traffic police official is deputed on a thickly populated area where heavy traffic is flowing and his primary job is to manage the traffic, instead of doing that, the traffic police official can stop a vehicle having number plate of the other States, just for the***

purpose of checking the documents of the vehicle and leaving the entire traffic to a situation like traffic jam.

(c) The affidavit will also specify whether in routine, the police official can lay the barrier without making any entry in a DDR like special occasion when they have a previous information about any illegal activity or where they have any prior information regarding the serious law and order problem or for checking of the over-speeding vehicle, etc. can they stop the vehicle on the Highways for the purpose of checking the documents, thereby causing traffic jams.

(d) Whether any time is specified for doing the checking of documents and can a traffic police constable stop a vehicle at odd hours only for the purpose of checking the documents of the vehicle, other than for security purpose.

(e) Whether a single police personnel can be deputed on traffic duty in late hours.

(f) Whether police barriers can be fixed permanently on National/State Highways for checking of paper of vehicles.

The affidavit be filed positively well before the next date of hearing i.e. 12.05.2023.

A photocopy of this order be placed on the file of other connected case.”

4. Learned counsel for the petitioner contends that petitioner was granted interim bail by the Coordinate Bench on 20.03.2023. Also contends that after passing of the said order, petitioner is regularly appearing before learned trial Court and there is no apprehension that he shall threaten or pressurize the prosecution witnesses or likely to hamper the trial, in any manner.

5. Learned State counsel, after obtaining instructions from quarter concerned, is not able to dispute the aforesaid factual position.

6. Heard learned counsel for both the sides and perused the paper book.

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7. Petitioner was granted interim bail by the Coordinate Bench and he is regularly appearing before the Court below; there is no allegation that he is likely to misuse the concession of bail or hamper the proceedings in any manner, in case his interim bail is made absolute; thus, sending him in custody at this stage would not serve any purpose.
8. Consequently, present petition is allowed. Interim bail granted to the petitioner, vide order dated 20.03.2023, is made absolute. He shall be admitted to bail on furnishing bail/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.
9. Petitioner shall appear on each & every date and fully co-operate with the learned trial Court without seeking any unnecessary adjournment(s).
10. The above observations may not be construed as an expression of opinion on the merits of the case.
11. It is clarified that in case there is any misuse of concession of bail on the part of the petitioner, State would be at liberty to move an application for recalling of this order
12. Pending application(s), if any, shall also stand disposed off.

23.11.2023
adhikari

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No