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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: October 17, 2023

Himanshu

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Baljeet Beniwal, Advocate for petitioner.

Ms. Svaneel Jaswal, Additional AG Haryana.

ARUN MONGA, J. (ORAL)

Following the denial of bail by the learned trial Court, the petitioner is now before this Court seeking his release as an undertrial in a case FIR No.458 dated 23.12.2020, registered under Sections 148, 341, 302 read with Sections 149, 120-B of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and Section 25 of Arms Act, 1959 (hereinafter referred to as 'Arms Act'), at Sector-31 Police Station, in Faridabad.

2. According to the prosecution's account, the complainant, Hemraj, alleged that on December 23, 2020, his brother, Manoj (who has since passed away), was traveling back from Delhi in a Scorpio vehicle when 8-10 unknown individuals began to follow him in a Corolla, a Fortuner, and another vehicle. They also fired gunshots at his brother. Manoj attempted to escape, but the assailants blocked his path by stopping their vehicles in front of him. They then opened fire indiscriminately at Manoj. Subsequently, the assailants fled the scene. The complainant rushed his brother to Asian Hospital, where the doctors declared him deceased. An FIR was registered.

2.1. The complainant informed that his brother had received a threat from one Manoj Mangariya about 7-8 days prior concerning an ongoing dispute between them in their village. During the investigation, the petitioner was arrested as a co-suspect on July 13, 2021, and has been in custody since then.

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3. Firstly, the learned counsel for the petitioner argues that the co-accused, Vikas @ Vicky and Dharmender, who were assigned similar roles to the petitioner, had already been granted bail by this Court according to the order dated August 16, 2023, passed in CRM-M-2803-2023. Another co-accused, namely Ashok Kumar @ Patil, had also been granted bail by this Court vide order dated October 12, 2023, passed in CRM-M-50740-2023.

3.1. The learned counsel also references the depositions of complainant-PW1 and two other prosecution witnesses, PW2 and PW3 (Annexures P-1 to P-3, respectively), to demonstrate that the complainant and the two other prosecution witnesses have recanted their initial statements given to the police and have not supported the prosecution's version. They were declared hostile. He further asserts that, based on these depositions, it is likely that the trial will result in the petitioner's acquittal, claiming that the petitioner has been wrongly accused in this case.

3.2. Learned counsel appearing for the petitioner relies on the Apex Court's judgment in the case titled **Hasanujjaman and others Vs. The State of West Bengal**¹ to contend that, apart from the merits, merely on the ground of the duration of custody, the petitioner is entitled to bail. He further relies on the Apex Court's judgment in the case titled **Sanjay Chandra versus CBI**² to contend that imprisonment before conviction has a substantial punitive content.

3.3. Finally, he contends that nothing needs to be recovered from the petitioner, and he is not required for further custodial interrogation. There is no likelihood of the petitioner tampering with evidence or influencing prosecution witnesses, and the petitioner is not involved in any other case.

4. On the contrary, learned State counsel strenuously opposes the petition, expressing concerns about the possibility of the petitioner fleeing from trial proceedings if granted bail. Also argues that the petitioner has committed a serious offense. On a Court query, she does not controvert the grant of bail to the co-accused and complainant

¹ SLP (Crl.) No.3221-2023 decided on 04.05.2023

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and other two prosecution witnesses turning hostile, as aforesaid. She however, admits that petitioner is not involved in any other case.

5. I have heard the rival arguments and reviewed the case file.

6. In response to a query from the Court, under instructions from ASI Parvesh, learned State counsel informs that the challan has already been filed and charges were framed on December 05, 2022. Thus, the investigation regarding the petitioner is complete, and he is not required for custodial interrogation.

7. At this stage, the allegations against the petitioner are subject to trial. The trial's progress has been slow, and it is anticipated to take a considerable amount of time. Of the fifty six witnesses, only three have been examined so far. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since July 13, 2021, for more than 02 years and 04 months.

8. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that he might tamper with evidence or influence witnesses. There is no probability of tampering with evidence as it has already been seized by the investigating agency.

9. Co-accused of the petitioner have already been granted bail by this Court, as aforesaid.

10. The petitioner is stated to be a 22-year-old young person and having a fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

11. Considering the overall scenario, 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 by keeping the petitioner in further preventive custody.

12. Accordingly, the petitioner is ordered to be released on bail, in case not required in any other case, upon furnishing bail bonds and surety bonds to the satisfaction of the learned trial Court, where his case is being tried, and in case he/she is not available, before the learned Duty Judge, as the case may be.

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13. In case the petitioner is found involved or gets involved in any offense while on bail, the prosecution shall be at liberty to seek the cancellation of his bail in the instant case.

14. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on the merits of the case, as they are for the limited purpose of the bail hearing alone, and the learned trial Court shall proceed without being influenced by this order.

15. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 17, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No