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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 16.10.2023

Parvesh @ Parvej

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Satyawan Singh Nain, Advocate for the petitioner.

Mr. Karan Garg, AAG 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 with FIR No. 177 dated 17.04.2023, registered under Sections 323, 325, 342, 377, 379-B, 387 and 506 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') at the Ganaur Police Station in Sonipat.

2. According to the prosecution's account, on April 16, 2023, Sarfraj received a call around 6:30 a.m. from Gaffar to discuss some work. Later, the complainant, Taslim, and Sarfraj arrived on a motorcycle under the Garhi Kalan Bridge in Ganaur at around 3:00 p.m. Gaffar, who operates a hotel at DICT Chowk, met them beneath the bridge. Gaffar had Taslim sit on his motorcycle, while Sarfraj remained on his own motorcycle. After covering some distance, near a liquor vend, Sakil joined them, and Sarfraj asked Sakil to join him on his motorcycle. The group of four proceeded to a room located in a field. Subsequently, Gaffar left the complainant, Sarfraj, and Sakil in the mentioned room and departed to fetch other individuals. After some time, Gaffar returned with unidentified individuals. They entered the room and restrained Sarfraj and Sakil by tying their hands and legs. The assailants subjected them to physical

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abuse using a stick (Danda) and a cable wire. During the incident, Sakil and Gaffar seized Sarfraj's mobile phone (a VIVO make) and cash amounting to Rs. 3,500, while Sarfraj had a silver chain and Rs. 5,000 in cash taken from him. At this point, Parvesh (petitioner herein) arrived, and they proceeded to strip Sarfraj. They also subjected him to further violence, including inserting a baton into his private area (anus). Gaffar's brother, Sattar, also arrived at the scene, and Sarfraj had become unconscious by then. Sattar lifted Sarfraj, and his accomplices continued to assault him. Subsequently, the assailants demanded a ransom of Rs. 2 lakh. They also used Sarfraj's mobile phone to call his nephew, Riyasat, and demanded a ransom, threatening to kill both him and Sarfraj if their demands were not met. After some time, they left the room and fled. An FIR was registered. During the investigation, an offense under Section 325 IPC was added. The petitioner was arrested as an accused on April 18, 2023, and has been in custody since then.

3. The counsel for the petitioner relies on the Medico-legal Report (Annexure P-3) to argue that there is no medical report regarding the allegations of Section 377 IPC, which has been invoked based solely on the victim's statement without supporting evidence.

3.1. The petitioner's counsel submits that the injuries attributed to the petitioner and the complainant's account are not supported by medical evidence. The petitioner's counsel further asserts the petitioner's innocence and claims that the FIR's version is fabricated, and the petitioner is not linked to the alleged offense. No other cases are stated to be pending against the petitioner.

3.2. The counsel for the petitioner also argues that a similarly placed co-accused, Ragib Ali, was granted bail by this Court via an order dated August 17, 2023, as contained in Annexure P-3. 3.3 The petitioner's counsel further contends that the petitioner is not required for further custodial interrogation and that there is no likelihood of the petitioner tampering with evidence or influencing

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prosecution witnesses. The petitioner is believed to be entirely innocent and falsely implicated in the case.

3.4. Furthermore, the petitioner's counsel points out that the charge sheet has already been submitted, and the trial is expected to take a considerable amount of time. Consequently, it is argued that there would be no purpose served in keeping the petitioner in custody.

4. The learned State counsel opposes the petitioner's bail application, expressing concerns about the possibility of the petitioner fleeing from trial proceedings if granted bail. He, 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, it transpires that the investigation against the petitioner has been completed, and challan was presented on June 12, 2023. Charges have not been framed yet. At this stage, the allegations against the petitioner are subject to trial. Of the twenty prosecution witnesses, none has been examined so far. The trial's progress has been slow, and it is anticipated to take a considerable amount of time. 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 April 18, 2023, for more than six months.

7. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that he might tamper with evidence or influence witnesses.

8. Petitioner is stated to be a family man having fixed abode and clean antecedents. It is unlikely that he poses any flight risk and/or will flee from trial proceedings.

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9. Co-accused of the petitioner has been granted the concession of bail by this Court. I see no reason as to why petitioner be not meted with the same treatment.
10. Considering the overall scenario, without commenting on merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep 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 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.
12. In case, petitioner is found 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 the case as the same are for the limited purpose of bail hearing 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

October 16, 2023
Ajay

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