

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**217****CRM-M-51301-2022 (O&M)****Date of decision: 22.08.2023**

Min Bahadur Shah @ Milan Shah

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ajay Singh, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

ARUN MONGA, J. (Oral)

After being declined bail by learned trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.73 dated 09.02.2022, registered under Sections 381, 328, 392, 506 of the Indian Penal Code, 1860 (for short 'IPC'), at Police Station, Sector 10-A, District Gurugram.

2. Per prosecution version, Aarti, wife of petitioner was employed as a domestic helper in the complainant's house. On February 8, 2022, around 5 p.m., the complainant, Sumita, requested Aarti to prepare some juice. Following these instructions, Aarti prepared the juice but, allegedly added a poisonous substance to it. Upon consuming the contaminated juice, both the complainant and her children lost consciousness. Subsequently, four accomplices, including the petitioner, entered the complainant's residence, and intimidated the victims and proceeded to steal cash, jewelry, and other valuable items. In the morning, when the complainant regained consciousness, she raised an alarm. This attracted the attention of a neighbor, who in turn alerted Vishal, the tenant of the complainant. Vishal then opened the gate, allowing assistance to reach the victims. The complainant and her children were subsequently taken to Hospital for treatment. On the aforesaid statement of complainant, FIR was registered. Petitioner was arrested on 21.03.2022 and is in custody ever since.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated by the complainant just to put pressure on his wife. He was not even named in the FIR. He has been implicated on the basis of custodial disclosure statement of the co-accused. Said statement is not *per se* admissible in evidence. Petitioner is not involved in any other case.

3.1. Learned counsel for petitioner also submits that nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/or influencing prosecution witnesses. He, however, admits that no other case is pending against the petitioner.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. He got Rs.5500/- recovered from his share of the booty. Test Identification Parade of the petitioner was also got conducted. He was identified by the complainant in Test Identification Parade. Co-accused Aarti Shah-wife of the petitioner, Harkesh Shah and Tej Bahadur Lamba are still at large. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. He however, submits that no other case is pending against the petitioner.

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, on instructions from SI Satpal, submits challan has been presented. Investigation qua petitioner is complete and this he is not required for any further custodial interrogation. Charges were framed on 17.01.2023. Allegations against petitioner are a matter of trial at this stage. Out of 10 prosecution witnesses, none has been examined till date. Commencement/conclusion of trial is still likely to take long time. Bail allows an accused to maintain his freedom until his guilt or innocence is

determined. Whereas, petitioner has already been languishing in jail for the past about 01 year and 05 months, being behind bars since 21.03.2022.

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.

8. Having otherwise got clean antecedents, it is unlikely that petitioner poses any flight risk and/or will flee from trial proceedings.

9. Considering the overall scenario and 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 in instant case.

10. 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.

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

12. 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.

13. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

22.08.2023
vandana

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