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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-50330-2023 (O & M)
Date of decision: 22.11.2023

Kuldeep Petitioner
V/s
State of Haryana ...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Tushar Gautam, Advocate,
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.158 dated 24.03.2022 (Annexure P-1) under Sections 302, 394, 307 and 201 IPC and Section 25 (1-B(a) of the Arms Act (added Section 201 IPC) registered at Police Station, Pataudi, Distt. Gurugram, Haryana.

2. The present FIR came to be registered at the instance of Babu Lal who stated that he had a younger brother, namely, Rakesh Kumar (deceased). His younger brother had purchased one eco vehicle and was using the same as a taxi. On 24.03.2022, they (complainant party) received a call from the police station Pataudi that his younger brother had been shot dead. Thereafter, they (complainant party) reached the spot and saw that some one had shot his brother. Neither the phone nor the vehicle was found near the dead body of his brother.

The investigation began and an empty cartridge lying at the spot was taken into possession. On 25.03.2022, the looted eco vehicle was taken into police possession from near village Salahori, District Nuh. CCTV camera footage was also obtained.

One Hitesh @ Hunny was arrested in FIR No.207 dated 05.09.2022 under Section 25/54/59 of the Arms Act, Police Station Daruhera, District Rewari. He suffered his disclosure statement regarding the commission of the instant offence. He disclosed that he alongwith his co-accused, namely, Pankaj had booked the eco vehicle of the deceased for Rs.15,00/-.

Pankaj was arrested from Mumbai on 13.09.2022. He got recovered the country-made pistol used in the commission of the crime. As per the report of the FSL, the weapon used matched the empty cartridge found at the spot.

The report under Section 173(2) Cr.P.C. was submitted against Hitesh @ Hunny and Pankaj.

During the course of their interrogation, Hitesh @ Hunny and Pankaj disclosed that the petitioner had supplied two country-made pistols and 4-5 live cartridges to them (accused). The petitioner had also made a plan with them and had told them to bring the looted vehicle to him and that he (petitioner) would sell the same and they would distribute the proceeds. After looting the vehicle, they (Pankaj and Hitesh @ Hunny) had handed over the mobile phone of the deceased and keys of the eco vehicle to him (petitioner).

3. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. There is

absolutely no admissible evidence inculcating the petitioner. The disclosure statement of his co-accused had no evidentiary value. However, taking the prosecution case to be correct, the petitioner was not at the spot and the offence, if any, had been committed by his co-accused. Though, the petitioner was an accused in four other cases bearing FIR No. 182 dated 15.04.2020 under Sections 302, 323, 506 and 120-B IPC and Sections 25/54/59 of the Arms Act, Police Station Nuh, FIR No.51 dated 21.01.2013 under Sections 25/54/59 of the Arms Act, Police Station Nuh, FIR No.131 dated 01.04.2023 under Sections 25/54/59 of the Arms Act, Police Station Hathin, Palwal and FIR No.207 dated 05.09.2022 under Sections 25/54/59 of the Arms Act, Police Station Sector 6, Daruhera, Rewari, he had been granted the concession of bail in all those cases. As he was in custody since 05.12.2022 and none of the 38 prosecution witnesses had been examined so far, he was entitled to the concession of bail.

4. The learned counsel for the State, on the other hand, has filed a reply dated 15.11.2023 by way of an affidavit of Harinder Kumar, HPS, Assistant Commissioner of Police, Pataudi, Gurugram, which is taken on record. While referring to the aforesaid reply, he contends that the weapon of offence had been purchased from the petitioner. The petitioner had promised the other co-accused that he would help them in selling the looted vehicle and they would distribute the proceeds. He, however, states that other than the disclosure statements of his co-accused, there was no other evidence against the petitioner; that in the other four cases registered against him, he had been granted the concession of bail; that he was in custody since 05.12.2022 and that none of the 38 prosecution witnesses had been examined so far.

5. I have heard the learned counsel for the parties.
6. The veracity of the prosecution case against the petitioner shall be adjudicated upon during the course of trial. Even as per the case of the prosecution, the petitioner was not present at the spot when the alleged occurrence took place. He is stated to be in custody since 05.12.2022, none of the 38 prosecution witnesses have been examined so far and in the four other cases registered against him, he has been granted the concession of bail. Therefore, his further incarceration is not required.
7. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Kuldeep, is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.
8. The petitioner shall appear on the first Monday of every month before the local police station till the conclusion of the trial and furnish an affidavit each time that he is not involved in any case(s)/crime(s) other than the cases referred to in this order.
9. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from Trial without sufficient cause.

(JASJIT SINGH BEDI)
JUDGE

November 22, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No