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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-M-53459-2022
Date of Decision: 06.01.2023**

Karan

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Aakash Dalal, Advocate,
for the petitioner.

Ms. Nidhi Garg, AAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

Status report by way of affidavit of Deputy Superintendent of Police, City Jhajjar, District Jhajjar has been filed on behalf of the respondent/State in Court today and the same is taken on record.

This is the fifth petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.692, dated 12.08.2016, under Sections 307, 302, 120-B & 34 IPC and Section 25 of the Arms Act, 1959, registered at Police Station Jhajjar, District Jhajjar.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 17.08.2016, which is almost 6 years and 4 months. He further submitted that first three bail petitions were dismissed as withdrawn but when he filed fourth bail petition in CRM-M-6576-2021, the

same was dismissed by passing an order by this Court on 07.10.2021, which is also more than one year ago. He also submitted that at that point of time, the prosecution had already examined 20 witnesses out of 25 cited witnesses, and the same has also been recorded in the aforesaid order passed by this Court. However, the fourth bail petition was dismissed in view of the status report filed by the State especially considering the fact that as per the FSL report, the bullets recovered from the body of the deceased matched with the firearm recovered from the petitioner and considering the gravity of the offence, the regular bail of the petition was dismissed on 07.10.2021.

Learned counsel for the petitioner further submitted that although the present is a fifth successive bail petition but the same would be maintainable in view of the peculiar facts and circumstances, he submitted that firstly, the fourth bail petition was dismissed on 07.10.2021, which is almost 1 year and 3 months ago and now the total custody of the petitioner has now increased to 6 years and 4 months. Secondly, the petitioner was a juvenile but he was earlier tried along with the other co-accused before the learned Sessions Court in which most of the witnesses had been examined but now status report has been filed by the State in Court today, which shows from Para No.13 that a De-Novo trial has been started qua the present petitioner on 12.04.2022 wherein only one witness has been examined till date. The said De-Novo trial has been started because the petitioner was a juvenile at the time of alleged offence and he was required to have been tried by the Children's Court under the provisions of the Juvenile Justice Act, 2015. He further submitted that now since a De-Novo trial has started the trial would again take long time and the petitioner has already faced

incarceration for 6 years and 4 months, and therefore, he may be considered for the grant of regular bail.

On the other hand, Ms. Nidhi Garg, learned AAG, Haryana has submitted that it is correct that as per the status report filed by the State today itself although when the petitioner was tried jointly with the other co-accused, 23 witnesses have already been examined but now w.e.f. 12.04.2022, a De-Novo trial has started because the petitioner was a juvenile and it is also correct that the petitioner has faced incarceration for almost 6 years and 4 months. She has however opposed the grant of regular bail to the petitioner on the ground that the petitioner is a habitual offender and is involved in two more cases.

I have heard the learned counsel for the parties.

So far as the maintainability of the fifth bail petition is concerned, this Court is of the view that considering the aforesaid facts and circumstances that after the petitioner was tried jointly with the other co-accused and most of the witnesses have already been examined and a De-Novo trial has started from 12.04.2022, with the result that the total incarceration of the petitioner has become 6 years and 4 months would definitely be a change circumstance after the dismissal of the fourth bail petition. Therefore, the present successive bail petition filed by the petitioner is certainly maintainable.

Admittedly, the petitioner has faced incarceration for 6 years and 4 months and now a De-Novo trial has started. The mere fact that the petitioner is involved in two more cases, cannot become a ground for denial of regular bail to the petitioner in view of the peculiar facts and

circumstances of the present case. Apart from the above, it has been stated by the learned counsel for the parties that the petitioner is a juvenile being tried as an adult. Therefore, in view of the aforesaid facts and circumstances and especially considering the long custody of the petitioner, which is stated to be almost 6 years and 4 months, this Court deems it fit and proper to grant regular bail to the petitioner.

Consequently, the present petition is allowed and the petitioner is ordered to be released on bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

06.01.2023*Bhumika***(JASGURPREET SINGH PURI)**
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |