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2023:PHHC:146475

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

**CRM-M-56922-2023
DECIDED ON: 17.11.2023**

SOURABH @ SOURABHA

....PETITIONER

VERSUS

STATE OF HARYANA

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Rao Ajender Singh, Advocate
for the petitioner.

Mr. Sandeep Singh Mann, Addl. AG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in FIR No. 80, dated 10.03.2020, under Sections 302, 148, 149, 201, 120-B IPC, 1860 & Section 25 of the Arms Act, 1959, registered at Police Station Jind Sadar, District Jind.

2. Learned counsel for the petitioner contends the the petitioner has been falsely implicated in the present case only on the vague statement made by the complainant and his cousin brother. He further contends that as per the prosecution story, gunshot injuries has been attributed to the petitioner, however, no recovery has been effected from him. Moreover, perusal of final report under Section 173 Cr.P.C., reveals that the petitioner was not present at the place of

occurrence.

3. Learned counsel for the petitioner further submits that the petitioner is in custody since 28.03.2020, wherein challan stands presented on 14.06.2020; charges framed and the trial is at the stage of prosecution witnesses, wherein out of total 27 witnesses, 20 has been examined till date and all the other co-accused have been released on regular bail.

4. On the other hand, learned State counsel has filed the custody certificate of the petitioner, which is taken on record. According to which, he has suffered incarceration of 03 year, 07 months and 19 days. He submits that the petitioner is involved in two more cases, wherein he is on bail in one case, therefore, he does not deserve the concession of regular bail at this stage.

5. Heard counsel for the respective parties at length.

6. While dealing with the issue of grant of bail, this court is of the view that deprivation of liberty is punishment unless it is required to ensure that an accused person would stand his trial when called upon and therefore, it owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and found guilty. The underlined object of bail is neither punitive nor preventive. This Court sounded a caveat that any imprisonment before conviction has a substantial punitive content and it would be improper for me to refuse bail as a mark of disapproval of a conduct whether an accused has been convicted for it or not or to refuse bail to an under trail person for the purpose of giving him a taste of imprisonment as a lesson. It was enunciated that since the jurisdiction to grant bail to an accused pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care and caution by balancing the valuable right of liberty of an

individual and the interest of the society in general. Moreover, the seriousness of the charge, is no doubt one of the relevant considerations while examining the application of bail but it was not only the test or the factor and that grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case. The detention in custody of under-trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution and is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgement of apex court in **“Dataram Singh v. State of Uttar Pradesh and another, (2018) 3 SCC 22”**

7. Further reliance can be placed upon the decision of Apex court titled as **“Mahipal v. Rajesh Kumar alias Polia And Another, (2020) 2 SCC 118”**, a case where the offence committed was under Section 302 of IPC, trial was pending before the Sessions Court and the bail application filed by the respondent was rejected by the learned Additional Sessions Judge but was subsequently allowed by the High Court, the following pertinent observations have been made :

"12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the

considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.

13. XX XX XX XX XX XX XX XX

14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding."

8. Be that as it may, considering the fact that no recovery has been

effected from the possession of the petitioner and he has been arrayed as an accused on the basis of statement made by the complainant and his cousin brother. As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in *CRM-M-25914-2022* titled as “*Baljinder Singh alias Rock vs. State of Punjab*” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would lend the petitioner in a situation of denial the concession of bail.

9. Considering the fact that the petitioner has suffered incarceration for a period of 03 years, 07 months and 19 days; nothing has been recovered from the possession of the petitioner; added with the fact that the entire challan does not show the tower location of the mobile phone of the petitioner at the alleged spot of occurrence and moreover, investigation stands complete, challan stands presented, charges framed, the custodial interrogation of the petitioner is not required; this Court is of the view that no useful purpose would be served by keeping the petitioner behind the bars.

10. In view of the afore-said discussions as well as the judgment of the Apex Court rendered in the cases of Data Ram's (supra) and Mahipal's (supra) discussed herein above, the petitioner is directed to be released on regular bail on

his furnishing bail and surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, concerned

11. The present petition is, hereby, allowed in the afore-said terms.

17.11.2023

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(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>