

CRM-M-9465-2024

212 IN THE HIGH COURT OF PUNJAB AND HARYANA  
CHANDIGARH

CRM-M-9465-2024 (O&amp;M)

Date of Decision: 27.02.2024

SHAMSHAD

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kunal Dawar, Advocate  
for the petitioner.

Ms. Geeta Sharma, DAG Haryana.

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**HARPREET SINGH BRAR J. (Oral)**

1. This is the first petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 392 dated 19.12.2014 registered under Sections 420, 467, 468, 471, 120-B, 353, 332, 186 and 506 of Indian Penal Code and Section 25 of Arms Act at Police Station Bhupani, District Faridabad, Haryana.

2. Brief facts of the case are that on 19.12.2014, intimation was received from the secret informer that one Shamshad (petitioner herein), who is a thief, can be apprehended if raid is conducted at this house. It was also intimated that he has hidden two motor-cycles at his house. Upon intimation, a raiding team was set up. The said raiding team went to the house of Shamshad, where his father i.e. co-accused Abdulla and two to three other person started altercations with the police officials. They stopped the police from searching the alleged place of incident. Accused persons caused harm to the public witnesses as well as police officials. With the assistance of SI Satya Naryan, every endeavor was made to caught hold of accused Shamshad. However, he fled away from the place of incident.

Thereafter, search of the place as per Section 102 Cr.P.C. was carried out. Two motorcycles were seized from the place of incident. The number plate was found to be false and fabricated. Thereafter, the present complaint was moved and FIR against accused persons was lodged.

3. Learned counsel for the petitioner *inter alia* contends that petitioner is behind the bars since 05.04.2023 and the FIR(supra) was registered against the petitioner and his father on 19.12.2014 and father of the petitioner has been acquitted by learned Judicial Magistrate Ist Class, Faridabad, vide judgment dated 21.01.2020 (Annexure P-3). Thereafter, after arrest of the petitioner, final report was presented against him on 04.08.2023 and material witnesses have already been examined and out of 21 PWs, only 5 have been examined so far.

4. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner intentionally concealed himself and he was declared as Proclaimed Offender and after a lapse of 9 years, he has been arrested and as such he does not deserve the concession of regular bail.

5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that petitioner is behind the bars since 05.04.2023 and the trial of the case is progressing at snail's pace as out of 21 prosecution witnesses, only 05 have been examined so far and the case is triable by Magistrate. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

A two Judge Bench of Hon'ble Supreme Court in '**Satender**

Kumar Antil v. CBI’ (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

6. In view of the above, the present petition is allowed and the petitioner- Shamshad is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

7. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

27.02.2024  
Ajay Goswami

(HARPREET SINGH BRAR)  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |