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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-11401-2024(O&M)
Date of Decision: 11.03.2024

Sachin Chhikara @ Cheena

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Samay Singh Sandhawalia, Advocate, for the petitioner.

Mr. Gaurav Jindal, Additional Advocate General, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.257 dated 18.03.2021, under Sections 148, 149, 302, 201, 452, 120-B IPC and Sections 25, 27, 59 of Arms Act, registered at Police Station Kharkhoda, District Sonipat.

2. It has been submitted by the learned counsel appearing on behalf of the petitioner that the petitioner is in custody from 05.07.2021 which is more than 2 years and 8 months and 28 prosecution witnesses out of 64 have already been examined. He submitted that the petitioner was falsely implicated in the present case and rather he was not even named in the FIR but later on his name was nominated on the allegations that the petitioner was also present on the spot. He submitted that the reason as to

why the petitioner was falsely implicated was that he was earlier involved in some other cases and so far as the present case is concerned, he was not even involved. He submitted that earlier he had filed a bail petition before this Court in CRM-M-37219-2022 which was dismissed on merits on 18.10.2023 vide Annexure P-7 and submitted that after the dismissal of the aforesaid petition by this Court, one of the other co-accused namely, Naresh Saroha @ Nesha whose bail petition was also dismissed by a Co-ordinate Bench of this Court vide Annexure P-8 had assailed the order before the Hon'ble Supreme Court and the Hon'ble Supreme Court had granted bail to the aforesaid co-accused namely, Naresh Saroha @ Nesha. He submitted that Hon'ble Supreme Court had granted bail to the aforesaid co-accused on the ground of his custody of 2 years and 7 months and, therefore, the petitioner being on similar footing is also entitled for the grant of regular bail.

3. On the other hand, Mr. Gaurav Jindal, learned Additional Advocate General, Haryana has filed the custody certificate of the petitioner and has submitted that no doubt the custody of the present petitioner comes out to be 2 years, 8 months and 5 days but the trial of the case is going at a proper pace and now 28 prosecution witnesses out of 64 have already been examined. He submitted that it is a case where the petitioner was also a part of the organized group whereby they had gone to the house of the deceased and had fired upon the deceased. He submitted that as per the allegations when the complainant alongwith her husband were present at their home, then they heard a voice coming from the gate and when the husband of the complainant had opened the door, then the husband of the complainant saw about 8-10 persons who were standing outside the gate and they came

inside abruptly and thereafter, they had fired upon the husband of the complainant. Thereafter, the aforesaid 8-10 persons came inside the room where the husband of the complainant had entered due to fear and these persons fired bullets which hit the husband of the complainant on shoulder, abdomen, chest and other organs. He further submitted that some of the names out of the aforesaid 8-10 persons have been mentioned in the FIR but so far as the name of the present petitioner is concerned, the same was not mentioned in the FIR but at the time of investigation it was found that the present petitioner was also present on the spot and after he committed the present offence by way of firing from the pistol, he handed over the pistol to one of the co-accused namely, Monu Laheri from whom the recovery was made. He submitted that it is not a case that the petitioner was not actively involved in the present case as so submitted by the learned counsel for the petitioner but it is a case where the present petitioner had fired upon the deceased and it was because of his firing that the deceased had died and so far as the recovery of weapon is concerned, after firing he had handed over the pistol to the co-accused namely, Monu Laheri and that is why the recovery was made from the aforesaid co-accused namely, Monu Laheri and not from the petitioner.

4. The Additional Advocate General, Haryana also while referring to the custody certificate submitted that the petitioner is also having criminal antecedents and he is involved in as many as four more cases which include offences under Sections 307 and 302 IPC as well. He submitted that so far as the arguments raised by the learned counsel for the petitioner that the petitioner is at parity with the other co-accused namely, Naresh Saroha @

Nesha who has since been extended the benefit of bail by the Hon'ble

Supreme Court is concerned, the petitioner cannot be termed to be at parity with the aforesaid co-accused. He submitted that a perusal of the order by which the bail petition of the aforesaid co-accused namely, Naresh Saroha @ Nesha was dismissed by a Co-ordinate Bench of this Court vide Annexure P-8 would show that the aforesaid co-accused was involved in one case under Sections 307 and 120-B IPC and so far as the present petitioner is concerned, he is involved in the following cases:-

1. FIR No.113/2021, U/s 148, 149, 323, 506, 34, 325 IPC, P.S Murthal, Sonipat
2. FIR No.191/2021, U/s 307, 120-B IPC, 25/54/59 of Arms Act, P.S City, Sonipat
3. FIR No.256/2021, U/s 450, 34, 506, 120-B IPC, 25/54/59 of Arms Act, P.S Kharkhoda, Sonipat
4. FIR No.27/2021, U/s 302, 34, 120-B IPC and Arms Act, P.S. GRP, Sonipat

5. While referring to the aforesaid cases, the learned Additional Advocate General, Haryana submitted that the petitioner being a habitual offender and also involved in one more serious offence under Section 302 IPC in one other case as well and the fact that during investigation it was found that the petitioner had fired upon the deceased and, therefore, he cannot be termed to be at parity with the aforesaid co-accused. He also submitted that although the custody is a relevant factor for grant of bail but in the facts and circumstances of the present case, in case the petitioner is released on bail, then there is a reasonable apprehension that he will not only abscond from justice but he will also repeat the offence. He also submitted that it is also a settled law that the criminal antecedents itself

cannot become a ground for denial of bail but in the facts and circumstances of the present case since there is a reasonable apprehension with the police and considering the earlier antecedents that the petitioner will repeat the offence being a part of an organized gang, he does not deserve the concession of regular bail.

6. I have heard the learned counsel for the parties.

7. The petitioner is stated to be in custody for 2 year, 8 months and 5 days. He earlier also filed a petition before this Court which was dismissed on merits vide Annexure P-7 on 18.10.2023. Now a second petition has been preferred by the petitioner on the ground that one of the co-accused namely, Naresh Saroha @ Nesha has been granted bail by the Hon'ble Supreme Court. A perusal of the order which has been passed by a Co-ordinate Bench of this Court pertaining to the aforesaid co-accused namely, Naresh Saroha @ Nesha would show that the other co-accused was involved in one more case under Sections 307 and 120-B IPC and one of the grounds for dismissal of bail by a Co-ordinate Bench of this Court was his criminal history. Thereafter, the Hon'ble Supreme Court vide Annexure P-3 had granted bail to the aforesaid co-accused namely, Naresh Saroha @ Nesha on the ground of his custody and also considering the testimony of the eye witness. However, during the course of arguments learned Additional Advocate General, Haryana while referring to the custody certificate has brought to the notice of this Court that the petitioner is a habitual offender and he is involved as many as in four more cases which also include offences under Sections 307 and 302 IPC as reproduced above.

Therefore on the ground of having criminal antecedents, although it cannot

become a sole ground for dismissal of a bail petition but it certainly is a relevant factor for considering the grant of bail. The co-accused who was granted bail by the Hon'ble Supreme Court was involved in one case under Section 307 IPC, whereas the present petitioner is involved in four more cases including Section 302 IPC.

8. So far as the testimony of the eye witness is concerned, it was brought to the notice of this Court by both the learned counsel for the parties that the complainant had deposed before the Court at the time of trial by stating that because of her weak eyesight she could not recognize anybody except for one of the co-accused. However, as per the prosecution story, there were 8-10 persons and, therefore, nothing concrete can be inferred from the aforesaid testimony at least at this stage for considering the grant of bail.

9. So far as the custody of the petitioner is concerned, although he has already faced incarceration for 2 years, 8 months and 5 days but that again cannot itself become a ground for grant of bail but it is also one of the relevant factors which can be considered for the grant of bail to an accused person. The learned Additional Advocate General, Haryana has expressed reasonable apprehension that considering the aforesaid antecedents of the petitioner as well there is a reasonable apprehension that in case the petitioner is released on bail, then he may not only abscond but he may even repeat the offence since as per the allegations he was a part of an organized gang. This Court is of the view that the apprehension which has been expressed by the learned Additional Advocate General, Haryana cannot be ignored and carries weight. Even otherwise also, the trial of the case is going

at a normal pace and as per the learned counsel for the parties, 28 prosecution witnesses out of 64 have already been examined.

10. This Court is also of the view that the petitioner is not at parity with the aforesaid co-accused namely, Naresh Saroha @ Nesha in view of the aforesaid facts and circumstances. Apart from the above, in view of the gravity of offence and alleged role of the petitioner, he does not deserve the concession of bail.

11. Consequently, the present petition is hereby dismissed.

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

11.03.2024

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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