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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-14987-2024 in/and
CRM-M-11449-2024
Date of Decision: 19.04.2024

Deepanshu

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Pankaj Bains, Advocate
for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

HARSH BUNGER J. (ORAL)

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1. This is an application for placing on record the reply to the status report filed by the respondent/State along with Annexures P-4 and P-5.
2. For the reasons mentioned in the application, the same is allowed and reply to the status report along with Annexures P-4 and P-5 are taken on record, subject to all just exceptions.
3. Application is accordingly disposed of.

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1. Petitioner (Deepanshu) has filed this second petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail to the petitioner in case FIR No.44, dated 20.01.2022, under Sections 379-B, 392, 397, 454 read with Section 34 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959, registered at Police Station Meham, Rohtak (Annexure P-1).
2. The earlier petition filed by petitioner seeking regular bail was dismissed as withdrawn by petitioner vide order dated 24.05.2023 (Annexure P-3).
3. Reply by way of affidavit dated 20.03.2024 of Mr. Sandeep Kumar, H.P.S., Deputy Superintendent of Police, Meham, District Rohtak, has been filed on behalf of State of Haryana, which is already on record.
4. Custody certificate dated 18.04.2024 of the petitioner has been filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.
5. Briefly, the aforesaid case FIR was registered on the basis of a statement made by the complainant-Sachin, stating that on 20.01.2022, at about 5:53 P.M., four young boys came on a black motorcycle and after parking the said motorcycle, they entered into the shop of the complainant. It is averred that all the four boys were carrying country made pistol in their hands and on gun point, they took away Rs.1,50,000/- from the locker, two gold rings and one mobile phone bearing SIM Nos. 8295442388 and 8059590096 from the complainant and fled away from the spot. Accordingly, the aforesaid case FIR was registered.

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6. As per the reply filed by learned State counsel, it is stated that on the basis of CCTV footage, accused were identified as Deepanshu (petitioner) and Ajay (co-accused). It is further stated that the petitioner (Deepanshu) and co-accused (Ajay) were arrested by the police in this case on 22.02.2022 and their disclosure statements were recorded. As per the disclosure statement of the petitioner-Deepanshu, a sum of Rs.23,000/-, a knife and a pair of shoes were recovered and as per the disclosure statement of the co-accused- Ajay, a sum of Rs.10,000/-, revolver and the clothes worn by him at the time of the alleged occurrence were recovered. On the basis of the disclosure statements of the petitioner (Deepanshu) as well as co-accused (Ajay), Virender @ Deepak (co-accused) was arrested on 23.02.2022. It is further stated that Virender @ Deepak (co-accused) got the place of occurrence demarcated and a recovery of Rs.25,000/- was effected from him. The fourth accused was identified as Sunil @ Peela and during the investigation, it has been revealed that Sunil @ Peela (co-accused) has expired.

7. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the present case. Learned counsel for the petitioner submits that the petitioner is behind the bars since 21.02.2022. It is further submitted that the investigation in this case is complete; challan stands presented on 19.05.2022 and even charges have been framed on 14.03.2023 and trial is going on. It is stated that there are total 14 prosecution witnesses, however, only 5 witnesses (including complainant) have been examined till date, therefore the conclusion of trial is likely to take some time and no useful purpose would be served by

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keeping the petitioner behind the bars. While referring to Annexure P-4, learned counsel for the petitioner has contended that the complainant has failed to identify the petitioner was present at the place of occurrence. Learned counsel for the petitioner contends that the bail application under Section 439 of the Code of Criminal Procedure, filed on behalf of the petitioner before the Court of learned Sessions Judge, Rohtak has been wrongly declined vide order dated 21.10.2022 (Annexure P-2). Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court. Learned counsel further submits that the petitioner is also willing to furnish security in the form of Fixed Deposit Receipt (F.D.R.) before the concerned Court, so as to ensure his presence before the Court on each and every date of hearing. Accordingly, prayer for grant of regular bail is made.

8. Per contra, learned State counsel opposes the prayer of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. It is submitted that the petitioner does not have clean antecedents as he has been involved in more than 20 cases. Learned State counsel further states that there is an apprehension that in the event of grant of bail, the petitioner may influence the witnesses or may even abscond to delay the trial. Accordingly, prayer has been made for dismissal of the present petition.

However, learned State counsel has not disputed the fact that the investigation in this case is complete; challan stands presented; charges have been framed and trial is going on. It is also not disputed that out of 14 prosecution witnesses, only 5 witnesses (including complainant) have been

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examined till date. The custody period undergone by petitioner is also not disputed.

9. Learned counsel for the petitioner, in rebuttal, has submitted that although petitioner is involved in about 22 cases, however, in most of the cases petitioner stands acquitted and in other cases, petitioner is on bail. Learned counsel for petitioner has further relied upon the judgment of Hon'ble Supreme Court in ***Maulana Mohd. Amir Rashadi v. State of U.P. and another, 2012(2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment is reproduced herein below :-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

10. I have heard learned counsel for the parties and perused the paper book, reply dated 20.03.2024 as well as custody certificate dated 18.04.2024.

11. In the instant case, the petitioner is a young boy of around 20 years and he was arrested in this case on 22.02.2022 (as per the status report) and since then he has been in custody i.e. for more than 2 years; challan stands presented on 19.05.2022; charges were framed on 14.03.2023 and trial is going on; however, only 5 witnesses (including complainant)

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have been examined out of total 14 witnesses. Therefore, this Court has reason to believe that the trial in this case is likely to take some time to conclude.

12. Hon'ble Apex Court in case titled *Umarmia Alias Mamumia v. State of Gujarat, (2017) 2 SCC 731*, has held delay in criminal trial to be in violation of right guaranteed to an accused under Article 21 of the Constitution of India.

13. Hon'ble Apex Court in case titled *Dataram Singh v. State of Uttar Pradesh & Anr, 2018(2) RCR (Criminal) 131*, has held that freedom of an individual cannot be curtailed for indefinite period, especially when his/her guilt is yet to be proved. It has been further held by the Hon'ble Apex Court in the aforesaid judgement that a person is believed to be innocent until found guilty.

14. In *Manoranjana Sinh alias Gupta v. CBI, (2017) 5 SCC 218*, Hon'ble Apex Court has held that the object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial.

Pertinently, appropriate directions can be issued for securing the attendance of the petitioner during the trial.

15. Therefore, as regards the apprehension expressed by learned State counsel that the petitioner may influence the witnesses or may even abscond in order to delay the trial, it is observed that in the event of any such conduct, the prosecution can always approach the competent Court for cancellation of bail. Accordingly, the State/Prosecuting Agency/State police

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shall be at liberty to observe the behaviour of the petitioner during the bail period, and in case it feels that the petitioner is indulging in influencing any of the witnesses or tampering with the prosecution evidence in any manner or otherwise causing interference with the progress of trial, it shall be open for the State/Prosecuting Agency/State police to move to the trial Court for cancellation of the bail, which shall be decided by the trial Court on merits.

16. In view of the above discussion and in the light of judgment in ***Maulana's case (supra)***, the present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The petitioner shall also appear before the concerned Police Station/Station House Officer on alternate Monday of every month till the conclusion of trial.

17. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.50,000/- and submit the same with the trial Court. The same would be liable to be forfeited as per law, in case the petitioner remains absent from trial without any sufficient cause.

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18. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.
19. The petition is accordingly disposed of.
20. All pending application(s), if any, shall also stand closed.

19.04.2024
Himani

(HARSH BUNGER)
JUDGE

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