

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-18515-2024
DECIDED ON: 23.04.2024

KRISHNA ALIAS LADHAR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Umesh Aggarwal, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.23, dated 03.02.2024 (Annexure P-1), under Section 25(7) of Arms Act, 1959, registered at Police Station Gate Hakima, District Amritsar.
2. Learned counsel for the petitioner contends that it is only four 32 bore live cartridges, which were recovered from the right side pocket of pant of the present petitioner and that too has been attributed to the petitioner just to bring him within the fore-corners of Arms Act to invite the provisions of Section 25(7) thereof. He further contends that the pistol was recovered from co-accused Ajay only along with one magazine and two live cartridges of 32 bore pistol.
3. On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record.

He asserts that the petitioner is involved in two other FIRs, as is also mentioned in para No.6 of the instant petition by the petitioner himself but according to the custody certificate, the petitioner is not involved in any other case. He on instructions from ASI Malkiat Singh submits that inadvertently the same have not been mentioned in the custody certificate but actually the petitioner is involved in two FIRs i.e. FIR No.60, dated 07.04.2022, under Sections 336, 148, 149 IPC, registered at Police Station Gate Hakima, Amritsar and FIR No.166/26.12.2022, under Section 21(b) of NDPS Act, registered at Police Station C Division, Amritsar.

4. The case is still under investigation despite registration of FIR on 03.02.2024 and in the light of the fact that nothing is to be recovered from the possession of the petitioner, Mr. Rattu, DAG, Punjab on a query being put by this Court, submits that further custodial interrogation is not required though at the time of presentation of challan, only the presence of the petitioner would be essential.

5. Be that as it may, considering the fact that only four live cartridges were shown to be recovered from the possession of the petitioner, which makes the case highly doubtful that four live cartridges were recovered without having any weapon, then the story cannot be ruled out to the fact that such recovery has been fastened upon the petitioner merely to rope in the instant FIR whereas the weapon and other live cartridges along with one magazine and pistol are recovered from the possession of the co-accused Ajay Singh, who is behind the bars.

6. Looking into the totality of facts and circumstances and also the fact that trial has not yet commenced; investigation is over; challan is ready

but is pending for approval with the competent authority, to which learned State counsel submits that it will be presented before the trial Court within a period of two weeks from today and no fruitful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would tantamount to violation of principle of criminal jurisprudence i.e. “*bail is a rule and jail is an exception*”, as has been held by Division Bench of this Court in “***Rajinder Singh versus State of Haryana***”, 2022(2) RCR (Criminal) 85 apart from the fact that Article 21 of the Constitution of India also includes right of speedy trial and expeditious disposal of the same.

7. 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.

8. In the light of above, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

9. In the afore-said terms, the present petition is hereby allowed.
10. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

23.04.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No