



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M No.22026 of 2023 (O&M)
Date of decision: 21.05.2024

Shish Pal @ Satpal
....Petitioner
Versus
State of Haryana
....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. S.K. Rana, Advocate for the petitioner.
Mr. Saurabh Mohunta, DAG, Haryana.
Mr. Ashit Malik, Advocate for the complainant.

NAMIT KUMAR J. (Oral)

1. Prayer in this 2nd petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.133 dated 06.04.2022, registered under Section 25 of the Arms Act, 1959 and Sections 148, 149, 323, 379-B, 506 IPC (Sections 325, 307, 201, 120-B IPC added later on) at Police Station Civil Lines, District Kaithal.
2. Learned counsel for the petitioner submits that as per the allegations in the FIR, the complainant Anup Kumar was engaged in private business. His elder brother Surender had purchased land measuring 1 kanal 9 marla in the year 1993 and the complainant had also purchased the adjoining land measuring 1 kanal 9 marla in the year 2003 from one Chander Bhan. The owners were incorporated in the

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revenue record but the land was held in the joint khewat alongwith Chander Bhan. The complainant party had left 3 karam passage for ingress/outgress to their land through the process of court. The petitioner Shishpal hailed from the family of said Chander Bhan and after the death of Chander Bhan, he raised right over the said land and asked the complainant to vacate the same. Whereas, the boundary wall of the total land measuring 2 kanal 18 marla had been constructed since the year 2003. On the evening of 08.02.2022, the petitioner – Shishpal got demolished the boundary wall by JCB and also took away some bricks in the tractor-trolley. Thereafter, the matter was resolved in Panchayat convened at Police Station Civil Lines, Kaithal, where the petitioner – Shishpal assured not to interfere in the enjoyment of said land. Thereafter, the complainant started raising construction of wall on 03.04.2022 and the construction was almost completed and while the work was being carried out on 05.04.2022 at about 10:30 AM, in the presence of complainant's nephew Amit Bansal, the petitioner – Shishpal alias Satpal came alongwith one boy on a Scooty, armed with a pistol like article. They went towards the complainant and the petitioner raised lalkara to teach a lesson to complainant for raising construction of wall. The complainant ran towards the Dera situated in the fields, whereas, Amit saved himself by hiding in the Wheat crop. The petitioner, who was accompanied by 2-3 motorcyclists and 7-8 boys armed with 'dandas', 'gandasi', who chased the complainant and all the assailants running after the complainant attacked him with

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‘dandas’ and ‘gandasi’ due to which the complainant sustained injuries and thereafter, on raising noises, all the assailants left the spot after extending threats to the complainant. The injured were taken to hospital and medico legally examined and thereafter, the impugned FIR was registered.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is innocent and has been falsely implicated in the present case. He further submits that there is no specific attribution levelled against the petitioner except the lalkara. He further contends that the petitioner is in custody for the last more than 02 years.

4. Learned counsel for the petitioner further submits that the co-accused, namely, Rohit has already been released on regular bail by the learned Additional Sessions Judge, Kaithal, vide order dated 24.01.2023. Lastly, he submits that the investigation in the present case is complete as challan stands presented; charges have been framed and out of total 16 prosecution witnesses, 10 PWs have been examined so far and 01 PW has been died and only 05 PWs are yet to be examined and the trial is likely to take considerable time to conclude and, therefore, no fruitful purpose would be served by detaining the petitioner behind the bars.

5. Per contra, learned State counsel has filed reply along with custody certificate dated 20.05.2024, and has opposed the prayer for grant of regular bail to the petitioner on the ground that the petitioner is

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habitual offender and is involved in as many as 31 cases and, therefore, he does not deserve the concession of regular bail.

6. Refuting the above contention of the learned State counsel, learned counsel for the petitioner submits that in 30 cases, the petitioner stands acquitted and he stands convicted in 04 cases, in which either the petitioner is on bail or he has undergone the sentence awarded to him. He further relies upon the judgment of Hon'ble Supreme Court in ***“Maulana Mohd. Amir Rashadi Vs. 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 hereinbelow:-

“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.”

7. I have heard learned counsel for the parties and perused the record.

8. Without commenting anything on merits of the case and considering the fact that the co-accused of the petitioner, namely, Rohit has already been granted the concession of regular bail as mentioned above, and the fact that the petitioner is in custody for the last more than 02 years; investigation is complete; challan stands presented;

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charges have been framed and out of 16 PWs, only 05 PWs remained to be examined and the trial is likely to take considerable time to conclude, this petition is allowed and the petitioner is directed 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, in addition to conditions that may be imposed by the trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions:-

(i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.

(ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.

(iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.

(iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.

(v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned trial Court.

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(vi) *In case, the petitioner involves in any other criminal activity, during the pendency of the trial, it shall be viewed seriously and the prosecution shall be at liberty to move a petition for cancellation of bail granted to him.*

(vii) *The concerned Court may insist on two heavy local sureties and may also impose any other condition, in accordance with law, while accepting the bail bonds and surety bonds of the petitioner.*

(viii) *The petitioner shall report every 1st Monday of English calendar month before the concerned SHO till the conclusion of the trial and the SHO shall mark his presence by making an entry in the rojnamcha. In case, he does not report on every 1st Monday before the concerned SHO, it shall be viewed seriously and the concession granted to him shall be liable to be cancelled and the State of Punjab shall be at liberty to move an appropriate application in this regard.*

9. In case of breach of any of the aforesaid conditions and those which may be imposed by the trial Court, the prosecution shall be at liberty to move an application for cancellation of bail of the petitioner.

(NAMIT KUMAR)
JUDGE

21.05.2024

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No