



CRA-S-1661-2023

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**244 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**CRA-S-1661-2023
Decided on : 24.09.2024

Sunil Kumar Appellant

Versus

State of Haryana and another Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAULPresent : Mr. Nipun Vashist, Advocate
for the appellant.Mr. Gagandeep Singh Chhina, AAG, Haryana.
******Manjari Nehru Kaul, J.(Oral)**

1. The appellant is seeking quashing of order dated 03.04.2023 passed by learned Additional District and Sessions Judge, Rewari whereby his application for grant of regular bail under Section 439 of the Cr.P.C., in case FIR No.239 dated 09.06.2022 under Sections 323, 325, 307, 34 of the IPC, Sections 25, 27 of the Arms Act and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered at Police Station City, Rewari, District Rewari, was dismissed.

2. On 05.09.2023, this Court while directing the Trial Court to get the evidence of the complainant recorded passed the following order:

“Learned counsel for the appellant submits that the appellant has been in custody since 23.08.2022. It has been submitted that it a case of version and cross-version; it was also a matter of record the both



the sides had sustained injuries at the hands of each other. It has been further submitted that in fact it was the complainant party which initiated the quarrel and attacked the appellant and it was only thereafter, in his right to defence, in retaliation co-accused Vikas Yadav fired upon at at the opposite party. Learned counsel further submits that on the date of alleged occurrence, the appellant could not have been present at the place of occurrence much less aided the co-accused in any manner, because undisputedly, he was in custody and lodged in Bhondsi Jail and the appellant was implicated as an accused on the basis of a disclosure statement allegedly suffered by co-accused Rakesh @ Raka, who stated that one of the weapons of offence had been provided by the appellant to the co-accused.

Per contra, learned State counsel while opposing the prayer made by the counsel opposite on instructions from SI Deepak, has submitted that the occurrence in question has emanated from a gang war between the parties; it is also a matter of record that the appellant is involved in 24 other criminal cases. He further submits that the complainant has not yet been examined and is likely to be examined on the next date of hearing i.e. 18.10.2023 and hence in case the appellant is enlarged on bail at this stage, there could be a strong likelihood that he could tamper with material evidence and even try to influence the witnesses to depose in his favour.”

3. Learned counsel for the appellant submits that in the interregnum, the complainant has been examined before the Trial Court as PW-4 and it is a matter of record that he did not support the case of the prosecution, as a result of which, he was declared hostile. Learned counsel for the appellant has therefore, submitted that in the facts and circumstances, false implication of the appellant in the case at hand is all the more evident.

4. Per contra, learned State counsel while opposing the prayer and submissions made by learned counsel for the appellant, on



instructions, has not been able to dispute that the most material witness in the present case i.e. complainant had not only been examined but had been declared hostile during trial. However, learned State counsel has reiterated the allegations levelled in the FIR, which stands reproduced herein under:

“Stated that I am resident of above said address and Naveen S/o Balbir R/o Vikas Nagar, Arjun @ Mikka R/o Shiv Colony, Rohit R/o Ajay Nagar Rewari are my friends. Yesterday on dated 08.06.2022, Naveen called me near Ajay Nagar Park where Naveen, Arjun @ Mikka and Rohit and Priyanshu who is Naveen's friend met there. Naveen stated to me that he is going on Priyanshu's bike and you alongwith Arjun and Rohit should come to Rajkumar @ Jhota's house in Sanghi Ka Bass, on my motorcycle. Naveen left on Priyanshu's bike and I alongwith Arjun and Rohit reached Rajkumar @ Jhota's house in Sanghi Ka Bass, Rewari, 'on Naveen's motorcycle. There Naveen, Rajkumar @ Jhota, Rajesh, Devpal, Messi and 5-6 other friends of Rajkumar @ Jhota whose names I do not know met there and after some time Rajkumar @ Jhota stated that let's roam in the city and we left on 4-5 motorcycles. Naveen was riding his bike himself and I and Arjun@ Mikka were riding pillion. At about 10.30 p.m., when we turned back our motorcycle from near the Dharuheda Chungi and stepped down from the bike there Rakesh @ Raka Rao Sahab and Parveen @ Miya R/o Dharuheda alongwith his 10-12 friends was standing near a closed shop and his one friend Vikas @ Vikki R/o Dharuheda was standing near the



divider on the road. They started firing upon us and from our side Rajkumar @ Jhota also started firing upon them and everyone started running and they fired one shot which hit me on thigh of my right leg and I ran towards Kali Mata's Mandir and I fell there. In an ambulance I have been admitted to GH Rewari for treatment. Later on I came to know that my friends Naveen, Rajesh, Devpal also got shot and Messi sustained injury on hand. Legal action should be taken against them. Given my statement, heard and is correct. Sd/- Govind"

5. On a pointed query put to the learned State counsel, he on instructions, has not disputed the custody period of the appellant nor the factum of the complainant, who is the most material witness in the instant case, having been declared hostile during trial. Learned State counsel has placed on record the custody certificate of the appellant and asserted that a perusal of the same clearly reveals that the appellant is involved in number of criminal cases and hence, there is every likelihood that he could yet again commit an offence after he is enlarged on bail.

6. I have heard learned counsel for the parties and perused the material placed on record.

7. As not disputed by the learned State counsel, the sole material witness in the instant case i.e. complainant stands examined and has been declared hostile. No doubt, the appellant is involved in number of criminal cases, however, since all the material witnesses including the complainant stand examined in the present case, and as



observed earlier, he has not supported the case of prosecution, further incarceration of the appellant in the present case would serve no useful purpose as 29 prosecution witnesses still remain to be examined.

8. In the facts and circumstances as enumerated hereinabove, this Court deems it fit to extend the concession of regular bail to the petitioner. Accordingly, the instant petition is allowed. The petitioner be admitted to bail on his furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

10. Needless to add, in case the petitioner misuses the concession of bail granted to him, the State would be at liberty to seek cancellation of the same.

24.09.2024
sonia

(MANJARI NEHRU KAUL)
JUDGE

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