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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRM-M-32117-2024(O&M)
Date of decision : 06.11.2024**

Kapil

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. D.P. Singh, Advocate, for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked for grant of regular bail to the petitioner in case FIR No.154 dated 03.12.2022, under Sections 302 & 34 IPC and Section 25 of the Arms Act, 1959 (Section 120-B IPC and Section 25(8) and 27 of the Arms Act, 1959 were added later on) registered at Police Station Bhupani, District Faridabad, Haryana.

2. The relevant part of the FIR is reproduced below:-

“Sir, it is requested that Bitu Singh son of Joginder Singh, resident of House No.25-A, Street No.2, Harinagar Extension, Jaitpur Badarpur New Delhi-44 and I do farming work. My father has purchased 05 acres of land in area of village Kidawali and my parents have been living here for about 06 months after building a house in the fields. They are working as a farmer. In the year 2018, my father had signed the deal of the entire land with Akhtar resident of Faddha Colony, Jaitpur Delhi for four crore twenty five lakhs. The land agreement which Akhtar had made in the name of his driver Kalu son of Lallu Ram resident of Gaddha Colony at the time of

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the agreement, Akhtar had given us Rs.35 lakhs as a gift. The tenure for the remaining amount was 22 months. When Akhtar could not pay the remaining amount on time, I said that I will do farming on my land. You did not pay the money on time, so I will do farming on my land. So Akhtar and Kalu threatened me that if you are going to do farming on the land then I will kill you that tomorrow on 2.12.2022 at around 9 p.m., I went to my home in Jaitpur to my parents. On the night of 2/3.12.2022 at around 12.30 a.m., my brother in law Saranjit Singh son of Kashmir Singh resident of village Kidawali called me and told that your father has been shot dead by someone, after receiving the information, I came from my home to my fields and saw that my father was lying dead on the road due to bullet injury. I have full suspicion that my father was host by Akhtar and Kalu. Strict action should be taken against Akhtar and Kalu. Applicant Bittu sd/-, Bittu Singh son of Jogender Singh”

3. Learned counsel for the petitioner *inter alia* submits that the allegations against the petitioner are that he had sold a country made pistol and live cartridges 8-10 months prior to the occurrence of the incident. He further submits that petitioner has only been charged for offence under Section 25(1)(a) of the Arms Act, 1959. He further submits that the petitioner has been falsely implicated in this case and he has been nominated as an accused on the basis of disclosure statement of the co-accused. The petitioner has not been named in the FIR. The petitioner has undergone an actual custody of almost 11 months.

4. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He states that the petitioner was actively involved in the commission of the offence. He on

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11 months and there are 04 other criminal cases registered against him, however, he is on bail in all those cases. He further submits that the charges were framed on 16.04.2024 and out of a total of 34 prosecution witnesses, 04 witnesses have been examined till date. He however, contends that in view of the serious allegations against the petitioner, he is not entitled to the concession of regular bail.

5. Heard the rival submissions made by learned counsel for the parties.

6. Admittedly, the petitioner has undergone custody period of 11 months and there are 04 other criminal cases registered against him however, he is on bail in all those cases. The investigation is complete and out of a total of 34 prosecution witnesses, 04 witnesses have been examined till date. It would be unjust to keep him behind bars looking at the condition of the jails which are not conducive for rehabilitation process and detaining the accused persons in jails would also tantamount to violation of Article 21 of the Constitution of India including the right to speedy trial, and is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgment of Apex Court in **“Dataram Singh vs. State of Uttar Pradesh and another, (2018) 3 SCC 22”**.

7. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Apex Court in **“Abdul Rehman Antulay and others v. R.S. Nayak and another”, 1992(2) RCR**

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encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.

8. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Further, considering the aspect that the trial will take a considerable time to conclude, this Court is of the considered view that further incarceration of the petitioner will not serve any purpose.

9. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioner shall also abide by the following conditions:-

- (I) The petitioner will not tamper with the evidence during the trial.
- (II) The petitioner will not pressurize/intimidate the prosecution witness(s).
- (III) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (IV) The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.
- (V) 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 from disclosing such facts to the Court or to any police officer or tamper with the evidence.

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10. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

11. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

06.11.2024
Ramandeep Singh

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No