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2024:PHHC:091021



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33394-2024 (O&M)
DECIDED ON: 19.07.2024

RAKESH SHARMA @ RAKESH PANDIT

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. P.S. Chauhan, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

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.238, dated 09.06.2022, under Sections 148/149/307/323/324 of the Indian Penal Code, 1860 and 25 of Arms Act, 1959 (Sections 216/326/201 and 120-B), registered at Police Station Rewari City, District Rewari.
2. Learned counsel for the petitioner contends that as per the prosecution story, the name of the present petitioner Rakesh Sharma @ Rakesh Pandit s/o Vijay Kumar @ Vijay Sharma was nominated as an accused only on the basis of disclosure statement of co-accused Raj Kumar @ Jhota. It is vehemently, argued that no other incriminating act has been referred by the prosecution which could invite the offences under Sections

148/149/307/323/324 of the Indian Penal Code, 1860 and Section 25 of Arms Act, 1959.

3. On the other hand, learned State counsel has produced the custody certificate of the petitioner which is taken on record, according to which the petitioner has remained in custody for a period of 02 months and 23 days. He has drawn attention of this Court to the affidavit (Annexure P-14) dated 18.10.2023 executed by the complainant Vikash Yadav s/o Rai Yadav wherein he averred that he would not have any objection if the accused persons including the petitioner are released and acquitted in this case meaning thereby he has turned hostile.

4. Be that as it may, considering the fact that the petitioner was nominated as an accused only on the basis of disclosure statement of co-accused who also stands extended the concession of regular bail by this Court vide order dated 21.02.2024, vide CRM-M-2185-2023 (Annexure P-13); apart from that the complainant has turned hostile as is evident from an affidavit executed by him dated 18.10.2023 (Annexure P-14).

6. At this stage, though without advertent to the merits of the case and considering due regard to the fact that he is behind the bars for a period of 02 months and 23 days wherein challan stands presented on 06.12.2023, investigation is complete; charges have not yet framed, meaning thereby the conclusion of the trial will take a long time for which the petitioner cannot be detained behind the bars for an indefinite period.

7. Even further, right to speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21. This constitutional right cannot be denied to the accused as is the mandate of the Apex court in

“Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna”, (1980) 1 SCC 98; wherein it was held as under:

“10. Directions given by this Court in Hussainara Khatoon (supra) to this effect were left to be implemented by the High Courts Hussainara Khatoon and ors. (VII) etc. v. Home Secretary, Bihar and ors. etc. -(1995) 5 SCC 326 - para 2 are as follows :

*"2. Since this Court has already laid down the guidelines by orders passed from time to time in this writ petition and in subsequent orders passed in different cases since then, we do not consider it necessary to restate the guidelines periodically because the enforcement of the guidelines by the subordinate courts functioning in different States should now be the responsibility of the different High Courts to which they are subordinate. General orders for release of undertrials without reference to specific fact-situations in different cases may prove to be hazardous. While there can be no doubt that undertrial prisoners should not languish in jails on account of refusal to enlarge them on bail for want of their capacity to furnish bail with monetary obligations, these are matters which have to be dealt with on case-to-case basis keeping in mind the guidelines laid down by this Court in the orders passed in this writ petition and in subsequent cases from time to time. Sympathy for the undertrials who are in jail for long terms on account of the pendency of cases has to be balanced having regard to the impact of crime, more particularly, serious crime, on society and these considerations have to be weighed having regard to the fact-situations in pending cases. While there can be no doubt that trials of those accused of crimes should be disposed of as early as possible, general orders in regard to judge strength of subordinate judiciary in each State must be attended to, and its functioning overseen, by the High Court of the State concerned. We share the sympathetic concern of the learned counsel for the petitioners that undertrials should not languish in jails for long spells merely on account of their inability to meet monetary obligations. **We are, however, of the view** that such monitoring can be done more effectively by the High Courts since it would be easy for that Court to collect and collate the statistical information in that behalf, apply the broad guidelines*

already issued and deal with the situation as it emerges from the status reports presented to it. The role of the High Court is to ensure that the guidelines issued by this Court are implemented in letter and spirit. We think it would suffice if we request the Chief Justices of the High Courts to undertake a review of such cases in their States and give appropriate directions where needed to ensure proper and effective implementation of the guidelines. Instead of repeating the general directions already issued, it would be sufficient to remind the High Courts to ensure expeditious disposal of cases...."

(emphasis added)

8. Moreover 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 (Criminal) 634 observed that Right to Speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. And court also observed that the Right to Speedy Trial from the point of view of the accused are:

I. The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

II. The worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

III. Undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

9. Looking into the totality of facts and circumstances, the petitioner deserves the concession of regular bail.
10. Hence, 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.
11. In the afore-said terms, the present petition is hereby allowed.
12. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

19.07.2024
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(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>