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

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Date of decision: 3rd September, 2024

Vikas Kumar @ Vikey @ Vikash Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Jagmohan Ghumman, Advocate for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 439 of CR.P.C. for grant of regular bail in case bearing FIR No. 272 dated 08.07.2023 registered under Sections 364-A, 384, 392 and 34 of IPC, 1860 and under Section 25(1-B)(a) of Arms Act, 1959 (Sections 397, 411 of IPC, 1860 added later on and Section 364-A deleted) at Police Station Sector 40, District Gurugram.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of complaint lodged by the complainant Saurabh Bali alleging therein that on the night of 07.07.2023, he was going towards his house in his car make *Hyundai Alcazar* bearing registration No. HR-98J-9871. When he reached

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near Sector 30, he stopped his car to ease himself and while he was getting out of the car, two youths came from behind and started saying that he had hit someone. Thereafter, they opened an assault upon him and pushed him in the back seat of his own car. They covered his face with a cloth and by showing some firearm and making him scared. They boarded his car and one of them started driving the same. They took his ATM Card, Credit card, Debit card and made some transactions through PayTM and then withdrew money by using his ATM card. They also snatched his purse, one gold bracelet and one gold ring worn by him. It was on the noon of 08.07.2023, that they dropped him near Basai Flyover, Dwarka Express and fled away with his car.

3. After registration of FIR, investigation proceedings were initiated. During investigation, the co-accused Parvinder @ Parveen was apprehended on 09.07.2023. He was interrogated and suffered disclosure statement admitting his involvement in the subject crime and also took the name of the present petitioner and of co-accused. The accused Naseeb Ali was arrested and he too disclosed the name of the petitioner. Accused Sidhrath was arrested on 09.07.2023. Offence under Section 411 of IPC was added. Offence under Section 364-A of IPC was deleted during the course of investigation. The petitioner who was lodged in District Jail, Bhondsi in connection with some other case, was joined into the investigation of this case and was formally arrested. On the basis of disclosure statement suffered by him, recovery of one purse, five gold rings, two gold chains, two pairs of

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silver anklets and one pair of gold earring which was purchased by him and the co-accused by using the Credit and Debit cards of the complainant, was effected. The petitioner also identified the shops from where, he along with the co-accused Parvinder had purchased the jewellery. Investigation has since been completed and supplementary challan has been presented against him as the challan against the co-accused Nasib and Parvinder had already been submitted. The petitioner had moved an application for grant of regular bail before the Court of Additional Sessions Judge, Gurugram which was dismissed vide order dated 06.06.2024.

4. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case on the basis of disclosure statement of co-accused which cannot be considered to be admissible in evidence. He was never named in the FIR. He was not identified by the complainant during the test identification parade. As per the FIR, only two youths were involved in the incident and both of them were arrested by the police thereby showing that he had no participation in the subject crime. The looted vehicle has been recovered from accused Sidhrath and one country made pistol has been recovered from co-accused Parvinder. A false recovery has been planted upon him. Co-accused Nasib and Sidhrath have been extended benefit of bail. On parity, he too deserves to be released on bail. With these broad submissions, it is urged that the petition deserves to be allowed.

5. Status report has been filed by respondent-State. It is argued by learned State counsel that there are serious and specific allegations against

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the petitioner. Infact, he along with the co-accused Parvinder was the main percipitator of the crime. He has criminal antecedents since as many as twelve cases, many of which are similar nature have been registered against him. The investigation has revealed that it was he who along with the co-accused Parvinder had caught hold of the complainant and by pointing a country made pistol and putting him under threat of immediate indigenous injury, he had not only looted the belongings of the complainant but by taking his debit, credit cards and by using his PayTM but had also got transferred a sum of Rs. 1,50,000/- to his gaming Id from the PayTM account of the complainant. He also used the credit card of the victim to buy fuel worth Rs. 3000/- in the looted vehicle. Jewellery was purchased by using debit/credit card of the complainant which was distributed amongst the co-accused and himself. The same has been recovered at his instance. The trial might be expedited. The material witnesses including the complainant are yet to be examined. There are chances of petitioner's absconding or intimidating the witnesses, if extended benefit of bail. Non identification of the complainant at the time of test identification parade is of no avail as the complainant is yet to be examined before the trial Court. With these broad submissions, it is argued that the petition deserves to be allowed.

6. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

7. The petitioner along with the co-accused Parvinder is alleged to

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have intercepted the complainant on the intervening night of 7/8.07.2023 while he was getting out of his vehicle. He is further alleged to have assaulted the complainant, forced him in his own car and by extending threat, took away his credit and debit card and gold jewellery worn by him at that time as well as mobile. He is also alleged to have transferred money by using credit, debit account and ATM of the complainant. As per the allegations, the co-accused Nasib who was with them before the complainant was stopped had been advised to go back and did not make any participation in the occurrence. The said accused has been extended benefit of bail. Accused Sidhrath Bali to whom looted car belonging to the complainant had been handed over and who has only been booked under Section 411 of IPC has also been extended benefit of bail. The case of the petitioner cannot be stated to be at parity with the case of the co-accused. The allegations against him are quite serious and specific in nature. Keeping in view the criminal antecedents of the petitioner, the apprehension that he might intimidate the complainant and other material witnesses or may abscond cannot be stated to be unfounded especially in view of the fact that two of the cases registered against him are under Section 174-A of IPC. The substantive evidence as to identification of an accused is the evidence recorded before the Court and the fact that he had not been identified by the petitioner in his test identification parade can be considered only on thorough assessment of evidence to be produced during the trial. Keeping in view the nature of the allegations as levelled against the petitioner, his antecedents, the quantum of

sentence which the conviction may entail and the attendant facts and circumstances of the case but without meaning to make any comment on the merits thereof, I am of the considered opinion that the petition does not deserve to be allowed at this stage. Hence, the same is dismissed.

[MANISHA BATRA]
JUDGE

3rd September, 2024

Parveen Sharma	1. Whether speaking/ reasoned	:	Yes / No
	2. Whether reportable	:	Yes / No