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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33662-2024

Date of decision : 22.07.2024

Aakash @ Bholu

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. B.S. Tewatia, Advocate for the petitioner.

Mr. Samarth Sagar, Addl. A.G., Haryana.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.228 dated 27.05.2022 under Sections 147, 148, 285, 341, 364 & 302 of the Indian Penal Code and Section 25 of the Arms Act, at Police Station Gadpuri, District Palwal.

2. Custody Certificate of the petitioner has been filed today in Court. The same is taken on record.

3. Reliance is being placed upon order dated 21.05.2024 passed in CRM-M No.21306 of 2024 whereby co-accused Vijay @ Gagan has been granted bail observing as under :

“1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.228 dated 27.05.2022, registered for the offences punishable under Sections 147, 148, 285, 341, 364 and 302 of IPC and Section 25 of the Arms Act at Police Station Gadpuri, District Palwal.

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2. FIR was registered on the statement made by one Sagar son of Ram Rattan, who happens to be brother of deceased Pawan @ Kalu alleging as under:-

“I, Sagar son of Ram Rattan, am a resident of Fatehpur Billoch, P.S Sadar Ballabgarh, District Faridabad. I- Sagar and my brother Pawan@Kalu were going to our village Fatehpur Biloch via Janoli on 26.5.2022 at about 7:00 P.M. Enroute, at village Janoli, Gaurav, his brother and other persons were found standing, who on noticing us, fired at us and encircled us. They had lifted my brother into a black Safari car and taken him to the jungles of village Janoli and Mandkol at an isolated place. They had taken me also on a bike at a gun point. Therefore, they had put pistol into mouth of my brother and beat him with iron rods, cudgels and hammers and left him semi dead and they had run away from there. Thereafter I called my brother Lala and maternal uncle (MAMA) Keshav over the phone to come to the spot. Post that, I, my brother Lala and Miss brother to APEX HOSPITAL, Palwal, where Doctors told maternal uncle (MAMA) Keshav had brought my his condition to be precarious. Therefore, we had GAR/shifted him to Metro Hospital, Faridabad, where Doctors had declared him dead. My brother Pawan has been killed by Gaurav, his brother and his other companions by causing injuries with iron roads and cudgels. Then a request to take action against the accused persons was made”.

3. As per the case of the prosecution, during the course of investigation, the present petitioner i.e. Vijay was arrested and interrogated. During investigation, he suffered a disclosure admitting his involvement in the commission of crime and pursuant to his disclosure, danda is stated to have been recovered.

4. Counsel for the petitioner submits that there is no evidence on record unearthed during the course of investigation to corroborate the same. Disclosure suffered by the petitioner while

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in police custody is not admissible being hit by Section 25 and 26 of the Evidence Act and there being no other incriminating evidence against the petitioner. Custody of the petitioner cannot be prolonged as a punitive measure.

5. On a specific query, State counsel does not dispute that there is no forensic examination of the said danda which is stated to have been recovered from the petitioner.

6. Keeping in view the incarceration suffered by the petitioner i.e. about two years and the nature of allegations and the nature of evidence collected against him and keeping in view that the trial is not likely conclude in the near future, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

7. Needless to say nothing recorded herein shall be construed to be an expression of an opinion on the merits of the case.”

4. Counsel for the petitioner further submits that the petitioner is behind bars for more than 2 years, 1 month and 21 days. Investigation already stands concluded and Challan stands presented. Thus, there can't be any apprehension that the petitioner shall tamper with the evidence. He claims parity.

5. State Counsel is not in posititon to dispute that the petitioner is similarly situated to that of his co-accused namely Vijay @ Gagan.

6. I have heard counsel for the parties and have gone through records of the case.

7. Without commenting on the merits of the case, keeping in view the incarceration already suffered by the petitioner and the fact that the investigation already stands concluded and Challan stands presented,



granting parity *viz-a-viz* Vijay @ Gagan, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

8. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

July 22, 2024			(Pankaj Jain)
Dpr			Judge
	Whether speaking/reasoned	:	Yes/No.
	Whether reportable	:	Yes/No