

211

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-40686 of 2023
Date of Decision: February 14, 2024

Rahul @ Dana
.....Petitioner

versus

State of Punjab
.....Respondent

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. Amardeep Singh, Advocate
for the petitioner

Mr. Rishabh Singla, AAG Punjab

Harpreet Singh Brar, J. (Oral)

1. This is the second petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 0182 dated 02.06.2021 registered under Sections 307, 148, 149 IPC and Section 25 of Arms Act, 1959 at Police Station Jandiala, District Amritsar.
2. The present FIR was lodged on the allegations that on 31.05.2021 at about 11.30 p.m. when the complainant alongwith his brother were going on motorcycle from Devidasspura to Amarkot, one car I-20 was parked at the road side and five persons were standing beside the car and they were armed with weapons. The complainant was acquainted with one of them i.e. petitioner and Mandeep Singh @ Budhu. The petitioner and Mandeep Singh @ Budhu took out pistols from their waist bands and started firing on the complainant with intention to kill him. The shot fired by the petitioner hit on the right thigh of the complainant whereas the shot fired by the co-accused Mandeep @ Budhu hit on the left shoulder of the complainant.

3. Learned counsel for the petitioner *inter alia* contends that the first application filed under Section 439 Cr.P.C. before this Court was withdrawn on 31.01.2023 and the second application is filed since the trial of the case is not making any progress and only 03 PWs have been examined so far out of 15 PWs. The injury attributed to the petitioner is on non-vital part and co-accused Mandeep @ Budhu who alleged to have fired a shot on the shoulder of the complainant has been granted regular bail by the learned Additional Sessions Judge, Amritsar on 05.10.2023.

4. Per contra, learned State counsel on instructions from ASI Durlabh Darshan submits that the petitioner is habitual offender and he is involved in twenty more cases and as such he is not entitled to be released on regular bail.

5. In rebuttal, learned counsel for the petitioner submits that the perusal of the custody certificate shows that the petitioner was involved only in three cases prior to the registration of the present FIR and he is in custody since 28.06.2021. All the FIRs mentioned in the custody certificate are registered when the petitioner was in judicial custody.

5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 28.06.2021 and as per the custody certificate he has already undergone custody of 02 years and 07 months and his co-accused has been granted concession of regular bail by learned Additional Sessions Judge, Amritsar on 05.10.2023. The trial of the case has not made much progress till date as only three PWs have been examined out of total of 15 PWs. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of Article 21 of the Constitution of India.

Culpability, if any, would be determined at the time of trial.

6. Keeping in view the law laid down by Hon'ble Supreme Court of India in 'Prabhakar Tewari Vs. State of U.P. and Another', 2020 (1) R.C.R. (Criminal) 831 and Maulana Mohd. Amir Rashadi vs. State of U.P. and others, 2012(2) SCC 382, the involvement of the petitioner in other cases would not be a ground to refuse grant of concession of regular bail.

7. In view of the above, the present petition is allowed and petitioner- Rahul @ Dana is ordered to be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

February 14, 2024
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No