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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-39338-2024 (O&M)
Date of Decision : 25.11.2024

NAYYUM

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Pradeep Chhoker, Advocate
for the petitioner.

Mr. Bhupinder Singh, DAG, Haryana.

KULDEEP TIWARI, J.(Oral)

1. Through the instant petition filed under Section 439 Cr.P.C. the petitioner prays for grant of regular bail in case FIR No.709 dated 13.08.2011, Under Sections 302, 201, 34 of IPC, registered at Police Station Chandni Bagh, District Panipat.

2. Learned counsel for the petitioner, in his asking for the relief (supra), submitted that the petitioner was arrested in the instant case on 02.09.2023 whereas, there is no incriminating evidence except the disclosure statement of the petitioner, and the co-accused. He further placed reliance upon the judgment dated 27.08.2013, passed by the learned trial Court concerned, whereby, the other co-accused namely, Bhura, has been acquitted by the learned trial Court concerned in the instant FIR, who has the similar allegations as the petitioner, and the

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incriminating evidence is not against the present petitioner, therefore, there is no chance in future that the petitioner can be convicted on such evidence as collected by the prosecution agency. He also submits that, the petitioner on an earlier occasion had applied for grant of anticipatory bail before the learned trial Court concerned, however, that anticipatory bail application was dismissed on account of the reply, as filed by the respondent-State, to the effect that the petitioner is neither named in the FIR nor he is wanted in any other FIR, of the Police Station concerned. He in addition submits that, the petitioner after dismissal of Ist anticipatory bail application, filed a second anticipatory bail application, and the same was also dismissed by the learned trial Court concerned, by drawing order dated 15.12.2021 (Annexure P-6), as the prosecution agency made a similar statement to the effect that no case has been registered against present petitioner in Police Station Chandni Bagh. He over and above submits that despite giving specific statement before the Sessions Court, concerned, he was arrested on dated 03.09.2023, and he is behind bar since last more than one year and 2 months. He to a greater extent submits that the entire case is based on circumstantial evidence, whereas, there is no incriminating circumstance connecting the present petitioner with the instant crime, except the disclosure statement. The probative value of which is inherently weak.

3. The FIR (supra) has been registered on a statement suffered by one Mohar Singh, the relevant extract reads as under:-



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“I am resident of above said address and had taken 20 Acre of land of Surender Chanana, r/o Model Town Panipat from the last five months. I along with my family members resides in fields of Surender Chanana. In one acre we had sown lady finger and day before yesterday be plucked lady finger. Today, I along with my brother Virender and Rajesh son of Ram Rattan Saini who is also resident of our village, when we three were plucking lady fingers then during the course, we went in the middle of the field, then at about 2.00 p.m. we saw a dead body, square printed (checkdar) parna was tied around the neck and blood was oozing out from the mouth of dead body and waste material had come out. Near dead body two plastic glasses of white colour, one litre bottle of Maaza, one empty quarter of country made liquor branded Malta, one little phial (shishi) of scent, one packet of aggarwati were there. One sealed bottle of beer was lying after short distance to dead body. Age of deceased was around about 35/40 years who was wearing pent and shirt. Black colour chappal was also lying near the dead body. It is presumed that yesterday evening an unknown person after giving him liquor and by strangulation committed murder of this unknown person. I after leaving Virender and Rajesh near the dead body was going to police station for giving information and you met me on the way at Sanoli Road. I got recorded my statement to you and found it correct after hearing.”

4. During investigation, co-accused Bhura was arrested on dated 11.11.2021, he suffered a disclosure statement *qua* himself, as well as disclosed the act of present petitioner in commission of murder of deceased-Raffa. Though the petitioner could not be arrested, therefore, he was declared as a proclaimed offender on dated 12.12.2012. The co-accused Bhura was sent to face trial by the SHO concerned in the FIR

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(supra). However, he on later stage was acquitted by the learned trial Court concerned, by passing a judgment of acquittal (Annexure P-8).

5. Today learned State counsel has filed status report by way of affidavit of Satish Kumar, HPS, Deputy Superintendent of Police, HQ, Panipat, and the same is taken on record along with custody certificate qua the petitioner.

6. After considering the rival submissions made by the parties concerned, this Court is of the view that the instant petition is amenable to be allowed for all the hereinafter reasons:

i) that though petitioner was declared PO on dated 12.12.2012 however, he approached the Sessions Court concerned, for grant of anticipatory bail during intem period, and on both the occasions, the prosecution agency made a specific statement to the effect that that the petitioner is not required in any FIR (supra), therefore, the anticipatory bail of the petitioner was dismissed. ii) whether the disclosure statements, and other incriminating evidence, as collected by the Prosecution agency, complete the chain of circumstantial evidence, so as to bring his guilt home of the petitioner, is a question which is yet to be established by the learned trial Court concerned, during the course of trial. iii) the petitioner suffered incarceration more that one year and two months as on today, whereas, the trial is yet to begin, and only charges have been framed on 04.03.2024.



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7. In view of the above, this Court is of view that the further custodial interrogation of the petitioner is not warranted, therefore, the present petition is **allowed**.

8. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

9. However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

November 25, 2024
Rimpal

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No