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

Sr. No.225**CRM-M-44126-2024 (O&M)****Date of decision : 11.09.2024**

Suraj

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Shrey Goel, Advocate, for the petitioner.

Mr. R.S. Thind, DAG, Punjab.

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked for grant of regular bail to the petitioner in case FIR No.156 dated 24.12.2023, under Sections 379-B(2) & 34 IPC (Sections 411 & 201 IPC were added later on) and Sections 13A, 3 & 67 of the Public Gambling Act, 1867, registered at Police Station Sarabha Nagar, Ludhiana.

2. The facts of the case are that on 23.12.2023, the complainant had visited Wave Mall, Ludhiana along with his family. He came out of the mall to have tea where he saw three boys engaging the people to gamble. They asked the complainant to gamble and when the complainant refused to do the same, the accused snatched Rs.20,000/- in the form of cash by threatening him with a knife. Thereafter, they fled from the spot.

3. Learned counsel for the petitioner submits the petitioner has been falsely implicated in this case. The occurrence took place on

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23.12.2023 and the FIR was registered on 24.12.2023 after a delay of one day. The petitioner has not been named in the FIR and has undergone an actual custody of 08 months & 13 days and is involved in 04 other criminal cases, however, in 01 case he is on bail and in 03 cases he has already undergone the sentence. Further, he has placed reliance upon the judgments passed by the Apex Court in **“Dataram Singh vs. State of Uttar Pradesh and another, (2018) 3 SCC 22”** and **“Abdul Rehman Antulay and others v. R.S. Nayak and another”, 1992(2) RCR (Criminal) 634** in support of his submissions.

4. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He states that the petitioner was actively involved in the commission of the offence. He has filed custody certificate in Court today and the same is taken on record. As per custody certificate, the petitioner has undergone an actual custody of 08 months and 13 days and is involved in 04 other criminal cases, however, in 01 case he is on bail and in 03 cases he has already undergone the sentence. He on instructions from the concerned investigating officer submits that the charges were framed on 19.04.2024 and out of 09 prosecution witnesses, no prosecution witness has been examined till date. The next date of hearing before the learned trial Court is 11.10.2024. In view of the serious allegations against the petitioner, he is not entitled to the concession of regular bail.

5. Heard the rival submissions made by learned counsel for the parties.

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6. The charges were framed on 19.04.2024 and none of the prosecution witness has been examined till date. The petitioner has undergone an actual custody of 08 months and 13 days and is involved in 04 other criminal cases, however, in 01 case he has been granted bail and in 03 cases he has already undergone his sentence.

7. It would be unjust to keep him behind bars looking at the condition of the jails which are not conducive for rehabilitation process and detaining the accused persons in jails would also tantamounts to violation of Article 21 of the Constitution of India including the right to speedy trial, and is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgment of Apex Court in **“Dataram Singh vs. State of Uttar Pradesh and another, (2018) 3 SCC 22”**.

8. As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance has been placed upon the judgment of the Hon’ble Supreme Court in **Maulana Mohd. Amir Rashadi Vs. State of U.P. and another, 2012 (2) SCC 382** in which, it is held that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. The relevant portion of the said judgment is reproduced herein-below:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

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9. 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.

10. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Therefore, this Court is of the view that further incarceration of the petitioner will not serve any purpose.

11. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioner shall also abide by the following conditions:-

- (I) The petitioner will not tamper with the evidence during the trial.
- (II) The petitioner will not pressurize/intimidate the prosecution witness(s).
- (III) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.

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(IV) The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.

(V) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

12. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

13. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

11.09.2024

Ramandeep Singh

Whether speaking / reasoned

Yes/No

Whether Reportable

Yes/No