

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(203)

CRM-M-44088-2024
Date of decision:- 06.11.2024

Rajesh Kumar... Petitioner

Versus

State of Haryana... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. R.S.Bains, Senior Advocate with
Mr. Mohan Singh Chauhan, Advocate for the petitioner.

Mr. Sharad Aggarwal, DAG, Haryana

SUVIR SEHGAL, J. (ORAL)

1. This is the third petition filed under Section 439, Cr.P.C. seeking grant of post-arrest bail in:-

FIR No.	Dated	Police Station	Sections
244	06.04.2022	Ambala Cantt. District Ambala, Haryana	148, 149, 323, 332, 353, 324, 307, IPC (Sections 21, 22-C, 27 and 29 of the NDPS Act were added later on)

2. Version of the prosecution is that FIR, Annexure P-3, has been registered on the statement of ASI, Balkar Singh, wherein it has been stated that he along with some other police officials were investigating FIR No.178 dated 01.03.2022 registered for offences under Sections 21 and 29 of the NDPS Act, when they received information that Guddi, wife of Rajesh Kumar (present petitioner), was standing near the house of one, Bina. Upon reaching the spot, they apprehended Guddi, who started shouting. Rakesh Kumar (present petitioner), Prince and Guddi intimated



them and pelted stones on the police team. Monika and Rohan, children of Rajesh Kumar also started fighting with the police officials and helped Guddi escape from police custody. Rajesh Kumar and his son, Prince, were apprehended and despite extensive search, the police team could not locate Guddi.

3. Learned senior counsel for the petitioner contends that the allegation levelled in the FIR is far from truth and the actual position is entirely different. He submits that the petitioner is in possession of the video recording as well as photographs, collectively appended as Annexure P-5 and P-5A, to submit that the incident, as alleged, never took place. Counsel asserts that the petitioner has been in custody since 06.04.2022 and the prosecution has failed to examine even a single witness. By making a reference to the MLR of the injured police officials, he urges that the officials have received bruises, swelling and complained of pain. It is his argument that by no stretch of imagination can offence under Section 307, IPC be said to have been attracted. He submits that the first petition filed by the petitioner was withdrawn vide order dated 06.11.2023, Annexure P-1, and the second petition was withdrawn on 14.08.2024, Annexure P-2, with liberty to file a fresh one with better particulars.

4. State counsel has filed a status report by way of an affidavit of Deputy Superintendent of Police, Ambala Cantt., District Ambala, which is taken on record and a copy has been supplied to the counsel for the petitioner. State counsel has also filed custody certificate dated 05.11.2024, which is also taken on record. By referring to the status report, State counsel submits that the petitioner does not enjoy clean antecedents and is



involved in eleven criminal cases, including the present one and out of the said cases, he submits that petitioner is named as an accused in two FIRs registered for offences under the NDPS Act. State counsel submits that the petitioner is accused of obstructing police officials from discharging their duty, besides assaulting them and helping an accused to escape from police custody. He asserts that the petitioner's family is involved in trade of drugs and based on the statement of the petitioner, recovery of 1500 tablets of *Tramadol* with a total weight of 525 grams and 260 grams *Heroin* has been effected. He has instructions to state that a car purchased by the petitioner from the proceeds of drug trade has also been recovered from the petitioner.

5. To counter the submission of the State counsel, learned senior counsel submits that the recovery has allegedly been effected from an open area. Explaining the position, he submits that the petitioner is a scrap dealer, who has stored scrap in the open, which is accessible to the public at large. He submits that out of the eleven criminal cases, petitioner has been acquitted in four and has undergone sentence in the fifth case. He submits that as the petitioner is a political worker, he has been deliberately targeted.

6. I have heard counsel for the parties and considered their respective submissions.

7. Petitioner has undergone a detention of more than 31 months. Despite the fact that charge was framed on 15.05.2024, prosecution has not examined any witness. This is a glaring lapse, moreso, as most of the prosecution witnesses are police officials. The injuries allegedly inflicted upon the police officials have been noticed by this Court. However, without

commenting upon them or on the allegations levelled against the petitioner, this Court is of the view that the petitioner deserves the concession of bail in view the length of detention and the nascent stage of the trial.

8. Without examining to the merits or demerits of the arguments addressed by counsel for the parties, petition is allowed. Petitioner is ordered to be released on bail on furnishing adequate bail/surety bonds to the satisfaction of the Area Magistrate/Duty Magistrate/Trial Court concerned.

9. While being released on bail, petitioner shall furnish an undertaking by way of an affidavit that henceforth he will not indulge in any criminal activity. He will also report at the police station concerned in the forenoon on the first Monday of every month and he shall also keep the SHO/IO apprised of his movements. In case, the petitioner violates any of these conditions, it shall be open to the State to seek cancellation of bail.

10. Nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

06.11.2024
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No