

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49923-2023
DECIDED ON: 24.01.2024

AJAY ALIAS PHUSAD
.....PETITIONER

VERSUS

STATE OF HARYANA
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Harshit Jangra, Advocate
for the petitioner.

Mr. Gurbir Singh Dhillon, AAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.434, dated 20.07.2023, under Sections 186, 353, 307, 120-B, 34 IPC and Section 25 of the Arms Act, registered at Police Station Sadar Bhiwani, District Bhiwani.
2. Learned counsel for the petitioner submits that the petitioner is at par with the other co-accused namely Ashish Samota, who has been granted the concession of regular bail by the trial Court vide order dated 15.01.2024, copy of which has been produced today in Court and the same is taken on record as Document A.
3. On the other hand, learned State counsel has produced the custody certificate of the petitioner, which is taken on record, to demonstrate that he has suffered incarceration for a period of 05 months & 20 days and could not controvert the fact that co-accused of the petitioner has been granted the concession of regular bail by the trial Court, though asserts that the petitioner is guilty of firing at the

police party thrice and on that account, country-made pistol has been recovered from his possession and he is involved in five more cases. Therefore, he seeks dismissal of the instant petition.

4. The said assertion does not inspire confidence of this Court as there is no incriminating material available on the record in support of the same.

5. Looking into the totality of the facts and circumstances and also the fact that challan stands presented on 21.09.2023; out of total 28 prosecution witnesses, none has been examined till date added with the fact that the co-accused has been granted the concession of regular bail by the trial Court vide order dated 15.01.2024.

6. This Court is sanguine of the fact that according to the proposition settled by the Apex Court that keeping somebody behind the bars, till his guilt is proved, for an indefinite period amounts to infringement of his right to life and liberty, as enshrined under Article 21 of Constitution of India and is against the principle "*bail is a rule and jail is an exception*".

7. As far as the pendency of other cases is concerned, as has been stated by learned State counsel, no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would lend the petitioner in a situation of denial the concession of bail.

8. In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

9. In the afore-said terms, the present petition is hereby allowed.
10. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

24.01.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No