

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-54347-2023 (O&M)
Date of decision: 22.02.2024

Devender

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Robin Singh Hooda, Advocate,
for the petitioner.

Mr. G.S. Dhillon, AAG, Haryana.

Mr. Deepinder Singh, Advocate,
for the complainant.

Sandeep Moudgil, J. (oral)

This is a petition seeking regular bail in FIR No.62, dated 18.07.2018, under Sections 120-B, 302, 506, 34 of Indian Penal Code, 1860 and Section 25 of Arms Act, registered at Police Station, GRP, Gurugram, District Gurugram.

Learned counsel for the petitioner submits that no injury, whatsoever, has been attributed to the present petitioner, namely Devender on perusal of the FIR, though he was allegedly having a country made pistol in his hand. He also asserts that since the framing of charges, the trial is moving at a very slow pace, wherein out of 35 prosecution witnesses, 24 witnesses have been examined so far and the petitioner has suffered incarceration of almost 5½ years.

the custody certificate, which is taken on record. Copy of the same has also been handed over to learned counsel for the petitioner in Court today. Learned State counsel argues that the petitioner has actively participated in the commission of the offence and has fired a shot from the country made pistol, which has been recovered from his possession alone. Hence, this petition may be dismissed.

Be that as it may, having gone through the custody certificate, the petitioner has suffered incarceration of 05 years, 05 months and 28 days, though he is involved in other criminal cases as well added with the fact that after framing of the charges on 01.12.2018, the prosecution evidence has not yet completed. In the light of this fact, it can be inferred that the trial will take a long time to conclude, for which, the petitioner cannot be put behind the bars for an indefinite period. It is also a fact to be taken into account that though, a country made pistol has been recovered, which has been used for firing shot, but no concrete or conclusive evidence is available to show that any injury was caused by such shot fired from the pistol. On that account, it cannot be conclusively held that he has actively participated in the commission of the offence under Section 302 IPC in particular.

Learned counsel for the complainant, who is assisting learned State counsel, has argued that in fact, seven bullet injuries were found on the person of the deceased, though it cannot be pointed out as to which injury was caused by the petitioner.

Having heard learned counsel for the respective parties, this Court is of the considered view that since the petitioner has already suffered sufficient period in custody and as per the principle of the criminal

beyond reasonable doubt, whereas in the instant case, trial is prolonged and likely to take long time in the light of the fact that out of 35 prosecution witnesses, only 24 have been examined and detaining the petitioner behind the bars for an indefinite period would amount to violation of Article 21 of the Constitution of India and is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgement of Apex Court in “***Dataram Singh vs. State of Uttar Pradesh and another;, (2018) 3 SCC 22***”.

In light of the above, 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.

The present petition is, hereby, allowed.

(SANDEEP MOUDGIL)
JUDGE

22.02.2024
Ajay Prasher

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No