

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-55839-2023
DECIDED ON: 02.05.2024

RAJU ALIAS RAJEEV

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Saksham Malhotra, Advocate and
Mr. Anshul Lubana, Advocate
for the petitioner.

Mr. B.S. Virk, Sr. DAG, 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.463, dated 22.07.2019 (Annexure P-1), under Sections 302, 34 and 120-B IPC and Sections 25, 54 of Arms Act, registered at Police Station Camp, District Palwal.

2. Learned counsel for the petitioner contends that the petitioner was not initially named in the FIR but subsequently the petitioner was nominated on the basis of motorcycle which was found standing at the site of alleged occurrence, which belongs to the petitioner. He further asserts that no other overt act has been attributed to him except above. It is also the case set up before this Court that the petitioner was suffering from multiple medical ailments and is having a hard time behind the custody with low medical facility being provided by the jail authorities. He further submits

that the petitioner is being treated for HIV AIDS at the young age of 21 years.

3. Learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. Copy thereof has been furnished to the learned counsel for the petitioner today in Court. He is not in a position to controvert the fact that no injury has been attributed to the petitioner by specifically informing that other two accused persons namely Iqbal and Rinku, who have given fire shots which turned out to be fatal, fled away from the spot along with motorcycle and once that motorcycle was recovered, it is the petitioner who has been nominated as an accused as the same belongs to him.

4. He also asserts that though the petitioner has not been attributed any active role except accompanying the other co-accused persons with common intention for commissioning of the offence and, therefore, does not deserve the concession of regular bail.

5. Be that as it may, having gone through the submissions made by the respective parties and the custody period i.e. 04 years, 08 months and 22 days, for which the petitioner has suffered incarceration and the fact that the petitioner is not a habitual offender as he is not involved in any other case, is sufficient enough for this Court in the light of the fact that the conclusion of trial will take a long time as charges were framed on 02.11.2022 and out of total 30 prosecution witnesses, only one has been examined till date.

6. In the light of above facts, this Court is sanguine of the fact that according to the proposition settled by the Apex Court in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131***, 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. Therefore, 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.

8. In the afore-said terms, the present petition is hereby allowed.

9. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

02.05.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>