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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-38678-2024(O&M)

Date of Decision: 07.01.2025

Dharambir

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vinod Ghai, Senior Advocate assisted by
Mr. Arnav Ghai, Advocate, for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No. 216 dated 01.09.2022, under Sections 302, 120-B, 109, 201 IPC and Section 25(1B) (a) of Arms Act, registered at Police Station Civil Lines, District Gurugram.

2. Mr. Vinod Ghai, learned Senior Counsel with Mr. Arnav Ghai, learned counsel appearing on behalf of the petitioner submitted that the petitioner is in custody from 17.04.2024 which is more than 8 months. He submitted that it is a case where the FIR was registered by the complainant by alleging that a call was received by one Rajinder that the father of the complainant was shot dead by some persons and an FIR was registered on 01.09.2022 and on the same date the statement under Section 161 Cr.P.C was also recorded which is Annexure P-4 wherein the names of various co-accused have been mentioned but the name of the petitioner was neither



mentioned in the FIR nor in the aforesaid statement. He submitted that after about 22 days on the basis of the statement made by one of the co-accused namely, Chaman against whom the basic motive was attributed, the name of the petitioner was nominated on 23.09.2022 but the police also did not make any effort to take any action against the petitioner nor the same is reflected in the affidavit filed by the respondent-State in the present case. He submitted that it was after 1½ years i.e. on 17.04.2024, the petitioner was arrested and although the petitioner is involved in seven more cases in which he is already on bail but that cannot become a ground for denial of bail to the petitioner in the present case. He also referred to para No.21 in the latter part of affidavit wherein it has been so stated by the Deputy Superintendent of Police, Special Task Force, Gurugram that the petitioner has not been found to be declared proclaimed offender in any of the other cases in which he is involved. He submitted that since the petitioner was arrested later on, the trial pertaining to the petitioner is commencing independently and till date no prosecution witness has been examined. He also submitted that rather it is a case of the prosecution themselves which is so reflected in the status report filed by the respondent that the only allegation against the petitioner is pertaining to conspiracy and even as per the State, neither the petitioner was involved in the offence of murder nor he was present at the spot. He also submitted that no recovery has been effected from the petitioner at all and he has been falsely implicated in the present case only because of the reason that he was earlier involved in number of cases. He also submitted that it is a settled law that the disclosure statement of a co-accused is not admissible in evidence especially in the present case when no other action has been attributed to



the petitioner except for conspiracy and no recovery has been effected from the petitioner and therefore, he may be considered for the grant of regular bail.

3. On the other hand, Mr. Vishal Kashyap, learned DAG, Haryana has submitted that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that till date no prosecution witness has been examined. While referring to the affidavit filed by the respondent-State, he also submitted that the only allegation against the petitioner was pertaining to conspiracy and the petitioner was nominated on the basis of the disclosure statement of a co-accused namely, Chaman.

4. Learned Senior Counsel for the petitioner has also brought to the notice of this Court that one of the other co-accused namely, Joginder Khatana has been granted regular bail by a Co-ordinate Bench of this Court vide Annexure P-29 and he was also nominated on the basis of disclosure statement of a co-accused. He submitted that although the aforesaid co-accused Joginder Khatana was not involved in other cases but so far as the merit of the present case is concerned, the petitioner would be at parity with the aforesaid co-accused Joginder Khatana.

5. I have heard the learned counsels for the parties.

6. The petitioner is in custody from 17.04.2024 which is more than 8 months and as per learned counsel for the parties, no prosecution witness has been examined till date. The trial of the petitioner is progressing independently and the petitioner was nominated on the basis of the disclosure statement of a co-accused namely, Chaman. The petitioner was nominated on 23.09.2022 and he was arrested after 1½ years i.e. on



17.04.2024 and as per learned State counsel, no reason has been given in the affidavit as to why for 1½ years no action was taken against the petitioner. So far as the petitioner being a habitual offender is concerned, it is a settled law that mere fact that the petitioner is involved in number of other cases would not mean that the petitioner can be denied the grant of regular bail. Apart from the above, it has been so stated in the affidavit filed by the respondent-State that the petitioner has not been declared proclaimed offender in any of the other cases in which he is involved. So far as the parity aspect is concerned, the other co-accused namely, Joginder Khatana has been granted regular bail by a Co-ordinate Bench of this Court and therefore, on the ground of parity as well, the petitioner deserves the concession of regular bail.

7. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court /Duty Magistrate concerned, if not required in any other case.

8. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

07.01.2025

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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