

(2018) 10 P&H CK 0340

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 3538 Of 2017 (O&M)

Narain Sai Alias Narain Asharamji Harplani

APPELLANT

Vs

State Of Haryana

RESPONDENT

Date of Decision : 25-10-2018

Acts Referred:

Code Of Criminal Procedure 1973 — Section 439

Indian Penal Code, 1860 — Section 34, 114, 120B, 143, 147, 148, 149, 153, 195A, 212, 214, 307, 302, 323, 342, 346, 354, 357, 376, 377, 464, 465, 468, 504, 506, 506(2), 507, 508

Arms Act, 1959 — Section 25

Prevention Of Corruption Act, 1988 — Section 7, 8, 9, 12, 13(1)

Citation : (2019) 1 RCR(Cri) 656

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Advocate : R.S. Cheema, Deepak Sabharwal, Chetan Sharma, Sanjiv Kumar Yadav, R.S. Bains

Final Decision : Allowed

Judgement

Daya Chaudhary, J

Petitioner-Narain Sai alias Narain Asharamji Harplani has approached this Court by way of filing the present petition under Section 439 Cr.P.C. for grant of regular bail to him in case FIR No.243 dated 13.05.2015 registered under Sections 307, 342, 195-A read with Sections 34 and 120-B IPC and Section 25 of the Arms Act at Police Station Sadar Panipat.

Learned senior counsel for the petitioner submits that the petitioner has falsely been implicated in the case with ulterior motive at the instance of a witness, who has made all efforts to falsely implicate the petitioner in many cases. The petitioner was taken into custody in the present case on 09.02.2016 whereas he was in custody in Lajpore, Surat (Gujarat) since December, 2013. Learned senior counsel further submits that the investigation of the case has been completed

and final report was submitted on 24.10.2016. The petitioner was implicated in the case on the basis of statement of injured-Mahinder Chawla. As per case of injured, there was a conversation between the petitioner and the injured whereby it has been alleged that the petitioner threatened the injured. Learned senior counsel also submits that it was a normal course conversation, which was considered as threat given by the petitioner. The conversation relates to the year 2008 and the injured became witness in the year 2013 and such statement is not admissible in the evidence. Learned senior counsel also submits that on the basis of complaint made by injured-Mahinder Chawla in the year 2008 regarding alleged threats, FIR No.206 of 2008 was registered. A thorough inquiry was carried out and thereafter, cancellation report was filed mentioning therein that no case was made out and the allegations levelled by the complainant were stated to be motivated. Subsequently also, said Mahinder Chawla tried to become a witness in the case and he appeared before the Commission of inquiry headed by a retired High Court Judge and gave evidence. The matter was quashed by the Gujarat High Court. The decision was challenged upto Hon'ble the Apex Court and judgment passed by the Gujarat High Court was upheld. At the end, learned senior counsel for the petitioner submits that co-accused of the petitioner, namely, Nishant Raj has already been granted concession of regular bail. Learned senior counsel while relying upon the judgment rendered by Hon'ble the Apex Court in State of U.P. Through Central Bureau of Investigation vs. Dr. Sanjay Singh and another, 1994 Supp (2) Supreme Court Cases 707 submits that the petitioner has been implicated in the case only on the basis of suspicion whereas at that time, he was in custody and no question arises to give any threat to the injured witness.

Learned State counsel has opposed the submissions made by learned senior counsel for the petitioner on the ground of seriousness of the offence and also the fact that the petitioner is involved in serious cases of offences under Sections 302 and 376 IPC. Learned State counsel also submits that FIR under Section 376 along with other offences was registered in State of Gujarat and the same is still pending. One more case under the Prevention of Corruption Act, 1988 is also pending in State of Gujarat.

Learned counsel for the complainant has also opposed the submissions made by learned senior counsel for the petitioner by reiterating the arguments raised by learned State counsel.

Heard arguments of learned counsel for the petitioner; learned State counsel as well as learned counsel for the complainant and have also perused the contents of the FIR and other documents available on the file including status reports filed on various dates.

Admittedly, after presentation of challan even charges have not been framed till date and there are total 42 witnesses. The petitioner is in custody since 09.02.2016 and no purpose would be served by keeping the petitioner in custody. Co-accused of the petitioner, namely, Nishant Raj has been released on

regular bail. In case FIR No.37 of 2013 under Sections 212, 214, 120-B IPC and Sections 7, 8, 9, 12, 13(1) of the Prevention of Corruption Act, 1988 registered in State of Gujarat, the petitioner was released on bail but bail bonds were not furnished and in another case i.e. FIR No.31 of 2013 registered under Sections 376, 377, 354, 357, 342, 346, 323, 143, 147, 148, 149, 506 (2), 508, 153, 120-B, 212, 114 IPC in State of Gujarat, the petitioner has not been released on bail. One more case i.e. FIR No.206 of 2008, under Sections 464, 465, 468, 323, 504, 506, 507, 34 IPC is also pending in State of Maharashtra.

Keeping in view that the petitioner is in custody since 09.02.2016; stage of trial as even charges have not been framed so far; his co-accused, namely, Nishant Raj has been released on regular bail; the trial may take time to conclude; moreover, pendency of other case is not a ground to deny the bail and it would be a symbolic release as the petitioner is not on bail in case registered under Section 376 IPC in State of Gujarat, the present petition is allowed and petitioner, namely, Narain Sai alias Narain Asharamji Harplani is directed to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court, if he is not in custody.