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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-22276-2023

Date of decision : 04.07.2023

**Mohammad Rahim Ashori
and others**

...Petitioners

Vs.

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

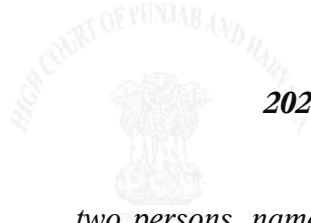
Present: Mr. Dilawar Hussain, Advocate for the petitioners.
Mr. Sukhdeep Parmar, Sr.DAG, Haryana.

MANOJ BAJAJ, J.

By means of this petition under Section 439 Cr.P.C, the petitioners seek regular bail during the pendency of the trial in case FIR No.540 dated 12.08.2021 registered under Sections 7 and 14 Foreigners Act, 1946 and Section 12 (1A) Passports Act, 1967 at Police Station Sadar, Gurugram. The petitioners were arrested on 12.08.2021.

The allegations in the FIR as noticed by the learned Additional Sessions Judge, Gurugram in the order dated 24.11.2021 are as under:-

“Brief facts of the prosecution case are that on 12.08.2021, SI Suresh Kumar, alongwith Ct.Parveen Kumar, Ct. Mahipal and Ct.Manish,was present near Bakhtawar Chowk, Sector 39, Gurugram, with regard to crime checking and patrolling duty. He received a secret information to the effect that behind the street of Gurudrara, the owner of the Sawaram Cafe , namely Manish is residing with some foreigners namely, Mohammad Rahim Ashori son of Adena Mohammad, resident of Takhar, Chayap, Kabul, Afganistan, Hameedullah Salari son of Nakib, resident of Takhar, Chyap, Kabul Afganistan and Abdul Basir son of Abdul Jalil village Aftal, City Badakhshan Tehrakulam, Afganstan, in the house of Prem Lata wife of Satish Thakran, resident of Pachiya Patti. On the basis of secret information, a raiding party was formed and raid was conducted at Swaram Cafe and enquired about the aforesaid persons and on enquiry,



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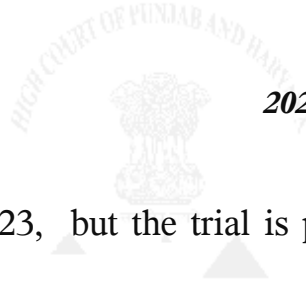
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two persons, namely Mohammad Rahim Ashori son of Adena Mohammad, resident of Takhar, Chyap, Kabul Afganistan and Hameedullah Salari accused-applicant were found present and they were asked to produce their passports and visa. On further enquiry, accused-applicant, namely, Hameedullah Salari, was found residing there without any valid passport and visa. On the basis of it, present case was registered.”

Learned counsel for the petitioners has argued that the petitioners are residents of Afganistan, but they are residing in India for a long-time, who have been implicated in this case for their alleged over stay in India as their visa, passport has expired. Learned counsel further submits that for the alleged commission of offences, the sentence of maximum five years can be imposed upon the petitioners, who are in custody for approximately two years and eleven months. He submits that charges were framed on 29.05.2023, but till date only two prosecution witnesses have been examined out of total nine witnesses, and the trial will take long time to conclude. He prays for bail.

While opposing the prayer, learned State counsel assisted by ASI Sanjay Kumar refers to the reply filed by way of an affidavit of Abhimanyu Lohan, HPS, Assistant Commissioner of Police, Sadar Gurugram and submits that respective visa of the petitioners expired on 07.06.2016, 05.02.2014 and 10.11.2019 and they were found to be residing in India without valid passport and visa. He on instructions further submits that now case is fixed for 10.07.2023 for examining the remaining prosecution witnesses.

After hearing learned counsel for the parties and considering the above background, this Court finds that it is not a case that the petitioners were indulging in any illegal activities or commission of crime and they are being prosecuted for over staying in India after expiry of their passport and visa. The final report in this case was filed on 11.10.2021, whereupon charges were



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framed on 29.05.2023, but the trial is progressing at a slow pace as till date only two prosecution witnesses have been examined. Thus, the conclusion of trial will take long time, therefore, further detention of the petitioners behind the bars may not serve any useful purpose.

Resultantly, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioners be released on regular bail subject to their furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

The petition is allowed.

(MANOJ BAJAJ)
JUDGE

04.07.2023

vanita	Whether speaking/reasoned :	Yes	No
	Whether Reportable :	Yes	No