

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-2921-2021

Date of Decision: 30.04.2021

Sandeep Sharma

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Rakesh Dhiman, Advocate, for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

Through Video Conferencing

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439 of Criminal Procedure Code for grant of regular bail in FIR No.35 dated 06.02.2019 under Sections 379A/34 of Indian Penal Code, 1860, registered at Police Station DLF Phase-I, District Gurgaon. As per the FIR a complaint was made by one Brajesh Kumar son of Ram Bihari Pandey that he work as a security guard and in the evening at around 08:15 p.m. when he was coming in a taxi from Mahipalpur Red Light Delhi to Shankar Chowk Gurugram then in addition to the driver, there were three more young boys in the vehicle out of which two were seated in the behind seat and between whom he was sitting on the behind seat and one boy was sitting alongside the driver seat and when the vehicle reached the Shankar Chowk then he told to stop the vehicle and the boy sitting next to him grabbed him and held

him in their feet and snatched his purse and the boy sitting on the left side snatched his mobile and the boy sitting alongside the driver seat snatched his blue bag which had a food tiffon and kept threatening him and the vehicle was kept moving and there were total four young boys and he may even recognize them.

The learned counsel for the petitioner has submitted that although the present petition is third bail petition but in view of the fact that the trial of the case is not moving because of the delay at the hands of prosecution, the petitioner may be considered for grant of regular bail. He submitted that the petitioner is in custody since 10.06.2019 which is approximately 1 year and 11 months and the charges were framed on 11.09.2019 but the prosecution has failed to get examined even the complainant and only two official witnesses have been examined. He submitted that the petitioner was falsely implicated in the present case because of the fact since he was falsely involved in some other cases by the police for the best reason known to them involved him also in the present case and he was not named in the FIR. He has further referred to Annexure P-6 which is a chart of other cases wherein the petitioner has been roped in, in the year 2019. Referring to the chart he has submitted that out of the 7 cases he has already been acquitted in two cases and in the remaining all the cases he is already on bail and in those cases the complainant had not identified the petitioner during the test identification parade. The learned counsel for the petitioner has also referred to bail granted to the similar situated co-accused in the present FIR vide Annexure P-2.

On the other hand, Mr. Naveen Singh Pawar, learned Deputy

Advocate General, Haryana has submitted while referring to the status report

by way of an affidavit filed by the Assistant Commissioner of Police, Gurugram that during the investigation of another FIR No.90 of 2019, the petitioner had suffered disclosure statement admitting the commission of the present offence in the present FIR and, thereafter in test identification parade the complainant identified the petitioner. Challan in the present case was submitted on 08.08.2019 and the charges were framed on 11.09.2019 and out of 17 prosecution witnesses (although wrongly stated as 12) of which 2 (wrongly typed as 4) have been examined. The learned State counsel further submitted that there are 7 cases pending against the petitioner and also the petitioner has been acquitted in two of the cases and the remaining cases are still pending although the petitioner is on bail. The learned State counsel has opposed the grant of bail on the ground that the petitioner is a habitual offender and, therefore, he may not be granted the concession of bail.

I have heard the learned counsel for the parties.

Although the present bail petition is the third bail petition but earlier the petitioner had withdrawn the bail application at that stage. Admittedly, the petitioner is in custody since 10.06.2019 which is approximately 1 year and 11 months and charges in the present case were framed on 11.09.2019 but even after expiry of such a long period, the prosecution has not been able to examine even the complainant. No explanation is coming forth from the State as to why the complainant has not been examined and only two of the official witnesses have been examined so far. The other co-accused in the present FIR had already been granted bail by the learned Sessions Court and it appears that such co-accused namely Yoginder Pratap is similarly situated with that of the present petitioner. The

aforesaid Yoginder Pratap was also facing 6 other cases and recovery of a few hundred rupees was made from him as well and he was also identified in the test identification parade before the police. The petitioner is already on bail in all other cases against him as stated by the learned counsel for the petitioner. Therefore, the fact that the prosecution has not been able to examine even the complainant for such a long time would certainly constitute a fresh ground and circumstance for the maintainability of the successive bail application.

Therefore, considering the totality and circumstances of the present case and considering the long custody of the petitioner, the present bail 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.

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.

30.04.2021

rakesh

**(JASGURPREET SINGH PURI)
JUDGE**

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