

CRM-M-7667-2021

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

CRM-M-7667-2021

Date of Decision:-13.09.2021.

Sukhbir alias Bhutiya

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Keshav Pratap Singh, Advocate for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

This is the first petition for grant of regular bail to the petitioner in case FIR No.236 dated 18.07.2020 under Sections 398, 401, 120-B IPC and Section 25 of Arms Act, 1959, registered at Police Station Bhuna, District Fatehabad.

Learned counsel for the petitioner has submitted that the petitioner was not apprehended at the spot. Even as per the prosecution case, two persons namely, Sanjay and Ravi @ Jora were apprehended while attempting to rob the police party. The petitioner has been sought to be implicated on the basis of the disclosure statement of the accused. No recovery has been effected from the petitioner and the petitioner has been in custody since 04.08.2020 and the challan has already been presented in the case and out of 17 witnesses only 04 witnesses have been examined and the trial is likely to take time. Learned counsel for the petitioner has relied upon

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a judgment of Coordinate Bench of this Court dated 05.06.2020 passed in **CRM-M-12657-2020** titled as Mandeep Singh @ Lavi Vs. State of Haryana and has referred to paragraph 5 of the said judgment which is reproduced hereinbelow:-

“In the considered opinion of this Court, the reasons given by the Additional Sessions Judge are not justified in the facts and circumstances. The Court has failed to take into consideration that the petitioner has been detained as such on a disclosure statement which may not stand the scrutiny in the Court of law. Apparently prima facie the investigating officer has over stepped his jurisdiction in his keenness to solve the crime as such which was not appreciated by the Additional Sessions Judge. It is hoped that in such blatant detention matters also the Sessions Court would be more sensitive to the accused who approach the District Judiciary for their freedom and who are unnecessarily forced to approach the High Court on account of lack of exercise of jurisdiction, even in valid cases, which is coming to the notice of this Court time and again.”

Learned counsel for the petitioner has further submitted that on the basis of the disclosure statement along-with the petitioner, one Sahil Khan was also named and was made co-accused and with respect to said Sahil Khan regular bail has been granted by the Sessions Judge vide order dated 16.09.2020 and the petitioner has been in custody for a period of

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almost more than one year, even post the said order granting bail to Sahil Khan.

Learned State counsel, on the other hand on instructions from SI Parladh Singh, has submitted that although in the present case, the petitioner was named on the basis of disclosure statement and no recovery has been made from him but he is involved in a large number of other cases out of which although he has earned 09 acquittals but there are 07 convictions and 05 cases are pending.

Learned counsel for the petitioner to rebut the said argument, has submitted that even the said Sahil Khan was involved in 05 more cases as is apparent from the order passed by the Sessions Judge (Annexure P-2) and moreover, as per settled law, it is the facts of the present case which are required to be considered for the purpose of deciding the present bail application. For the said proposition, learned counsel for the petitioner has relied upon a judgment dated 16.01.2012 passed by the Hon'ble Supreme Court in Criminal Appeal No.159 of 2012 titled as ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and others*** 2012 (2) SCC 382 reference has been made to the relevant portion of paragraph 6 which is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as

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*possibility of fleeing away from the jurisdiction of the Court
etc.”*

Keeping in view the above said facts and circumstances, moreso, the fact that the petitioner has been involved in the present case only on the basis of the disclosure statement of the co-accused and no recovery has been made from the petitioner and also the fact that co-accused of the petitioner Sahil Khan has already been granted regular bail vide order dated 16.09.2020 and the petitioner has been in custody since 04.08.2020 i.e. 01 year, 01 month and 09 days and only 04 witnesses out of 17 witnesses have been examined and the trial is likely to take long as also the fact that as per the authorities cited by the learned counsel for the petitioner, it is primarily the merits of the case in question which are to be considered, this Court is of the view that the present petition deserves to be allowed and the petitioner deserves to be released on bail.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to him not being required in any other cases.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

(VIKAS BAHL)
JUDGE

September 13, 2021.

sandeep

Whether speaking/reasoned:-

Whether Reportable:-

Yes/No

Yes/No