

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

CRM-M-30212-2021

Date of decision : 22.11.2021

Hitesh

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Sarfraj Hussain, Advocate
for the petitioner.

Mr.Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is the first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.19 dated 13.01.2021 registered under Sections 395, 397, 506, 120B IPC and Section 25(1B) (A), 27(1)A of the Arms Act, 1959 (Sections 323, 325, 148 read with Section 149 IPC were deleted and Section 27 of the Arms Act was added later on) at Police Station Sector 10-A, Gurugram, District Gurugram.

Learned counsel for the petitioner has submitted that in the present case, as per the prosecution version, the petitioner was stated to be armed with the pistol, but however there is no gun shot injury. He has referred to MLR, as per which, it has been stated that assault had been committed using rod by some people and there is no specific injury mentioned and all the injuries in the MLR are stated to be simple. Further, reference has been made to the order dated 10.05.2021 vide which the

Sessions Judge, Gurugram, has granted regular bail to co-acused Rahul alias Lambu. A specific reference has been made to paragraphs 8 to 12 of said order. The said paragraphs are reproduced hereinbelow:-

“8. In the instant case at the very outset it is pertinent to mention here that the foundation of this case, like any other criminal case, is the FIR. The above said FIR was lodged on the basis of a complaint submitted by Mahender Singh, the father of the injured. In the complaint itself the father of the injured stated that he arrived on the spot just after the attack launched on his son by the assailants. The sequence of incident narrated in the complaint shows that arrival of the complainant on the spot was followed by the departure of assailants from the spot. It shows that the complainant witnessed a part of the incident. However, in the complaint neither there is any allegation nor any reference of dacoity by the assailants.

9. The contents of the complaint also show that it had been reported by the complainant that Rs.6,000/- being carried by his son in his pocket were found missing, but later on in a subsequent statement of the injured, who was in senses and fit for making statement even at the time of filing of complaint, this stand has been changed and a new stand taken that he was carrying Rs.40,000/- in his pocket and this amount was robbed by the assailants.

10. *In my opinion, prima facie, the above mentioned improvement with regard to incident is nothing but an after-thought and it seems to be a part of an effort to magnify the gravity of offence allegedly committed by the assailants. In the instant case, firstly; the injured who was declared fit for making statement instead of getting his statement recorded, got the complaint filed by his father and secondly; in the complaint there is reference of missing of Rs.6,000/- only but in his statement the complainant stated that he was robbed of Rs.40,000/-. In my opinion, this improvement in the version of the prosecution story which led to invoking of sections 395, 397 IPC give rise to a big suspicion about the veracity of allegation with regard to commission of crime of dacoity.*

11. *In the instant case it is relevant to mention here that in this case two accused have already knocked the door of the Court for the concession of bail. Those accused are Narendr Dahiya & Neeraj. The bail application of accused Narender Dahiya has been allowed on 01.03.2021, whereas application of the accused Neeraj dismissed on 10.3.2021.*

12. *As far as the role of applicant/accused Rahul is concerned, as per prosecution case he was carrying a firearm, i.e. country made pistol at the time of incident. However, it is not the case of the prosecution that any*

firearm was used at the time of attack upon the complainant's son. As per prosecution case the injuries suffered by the injured were caused by blunt weapon and such weapon was recovered from the possession of accused Neeraj. In view of above, in my opinion, the case of the applicant/accused stands on a different footing than the case of Neeraj and has parity with the case of Narender.

A perusal of the above order would show that it was considered by the Sessions Judge, Gurugram that in the present case, the complainant had come after the substantial incident was over and the statement made by the complainant with respect to the alleged theft of Rs.6000/- was in contradiction to the statement made by the injured which was to the effect that theft to the extent of Rs.40,000/- had been committed. It has also been noticed that although the injured person was declared fit but instead of getting his own statement recorded, he got the complaint filed by his father, i.e. the complainant. It has also been noticed that although the present petitioner was stated to be armed with fire arm but the alleged injuries, which were caused to the injured, were with a blunt weapon and the said weapon has been recovered from co-accused Neeraj. It is submitted that the petitioner has been in custody since 20.01.2021 and there are 25 prosecution witnesses out of which none have been examined and thus, the trial is likely to take time more so in view of the present pandemic. It is prayed that the regular bail may be granted to the petitioner in the present case.

Learned State counsel has opposed the petition for bail. He has stated that the petitioner is involved in large number of other cases. It is also

submitted that the material witnesses are yet to be examined in the present case.

Learned counsel for the petitioner in rebuttal has submitted that in cases involving serious offences, the petitioner has already been acquitted. Further reliance has been placed upon the judgment of Hon'ble Supreme Court in ***“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”, 2012 (2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment 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 possibility of fleeing away from the jurisdiction of the Court etc.”

This Court has heard learned counsel for the parties.

Keeping in view the above said facts and circumstances of the present case, more so the fact that the petitioner has been in custody since 20.01.2021 and there are as many as 25 prosecution witnesses and none of them have been examined so far and thus, the trial is likely to take time, more so in view of the present pandemic, and no specific injury has been attributed to the petitioner and even the alleged injuries that have been caused to the injured are simple and the question of theft / dacoity in the

present case is a debatable one and it also seems that there is some previous enmity between the petitioner and the complainant party and also the fact that there is contradiction in the statement made by the complainant and son of the complainant (injured) and also in view of the fact that co-accused Rahul of the present petitioner has been granted regular bail by the Sessions Judge, Gurugram, vide order dated 10.05.2021 and also in view of the law laid down in ***Maulana Mohd. Amir Rashadi's*** case (supra), 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 his not being required in any other case.

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

It is made clear that in case the petitioner tries to threaten or influence any other prosecution witness, it would be open to the State to move an applicatoin for cancellation of bail of the petitioner.

(VIKAS BAHL)
JUDGE

November 22, 2021

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No