

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

216

CRM-M-28472 of 2020 (O & M)
Date of decision :-16.09.2021

Sonu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr.Ashok Kumar Sharma (Bhana), Advocate for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana
for the respondent-State.

SUVIR SEHGAL, J.

Heard through video conferencing

This is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 by the petitioner seeking grant of regular bail in case FIR No.229 dated 27.08.2018 registered for offence under Section 25 of the Arms Act, Section 341, 342, 394, 397 and 452 of Indian Penal Code at Police Station Julana, District Jind, Annexure P-1.

As per the case of the prosecution, FIR, Annexure P-1, has been registered on the statement of Vijay Yadav, who is posted as a Clerk in the Punjab National Bank, that on 27.08.2018 at about 12.00 in the noon when he was discharging duty as a Head Cashier, three unknown boys wearing helmets and carrying pistols in their hands, entered the bank. One of them, who had pistol in both his hands gathered all the bank employees in a corner, the other stood guard at the entry of the bank and the third, who had

his face covered with a black cloth, entered the cash room and put all the cash in a backpack. When the complainant resisted, he was hit with the pistol butt on his head, resulting in injury on his head and back. Sunil Kumar-Bank Manager, Pawan Kumar, Parvesh Rani, Kiran Bala were the other bank employees, who were present and tried to prevent the looting but the robbers managed to flee on a motorcycle with Rs.82,405/-.During the course of investigation, the petitioner was arrested on 06.12.2018.

Counsel for the petitioner contends that the petitioner has neither been named in the FIR nor the three prosecution witnesses, who are bank employees and were present at the time of the alleged occurrence, have been able to identify him. Counsel has placed reliance on order dated 16.03.2021 passed by this Court in CRM-M-3043-2021 whereby co-accused Sunil alias Sillu has been released on bail by this Court and order dated 20.07.2019, Annexure P-4, passed by the learned Additional Sessions Judge, whereby co-accused Israr @ Isar has been released on bail.

On the other hand, learned State counsel upon instruction from ASI Krishan, has opposed the petition by submitting that the antecedents of the petitioner as well as the nature of allegations against him do not warrant release of the petitioner on bail. He has referred to the status reports dated 30.12.2020 and 11.09.2021 filed by way of affidavit of Deputy Superintendent of Police, Jind. As per his instructions, challan has been presented, charge has been framed on 03.07.2019 and out of 31 prosecution witnesses some have been examined.

I have considered the respective submissions of the counsel for the parties.

Hon'ble Supreme Court in **Harjeet Singh versus Inderpreet**

from SLP (Criminal) 3739 of 2021 decided on 24.08.2021) has held that not only the nature of accusation, gravity of offence but also the severity of punishment, nature of evidence, reasonable apprehension of witnesses being tampered with or being threatened, and the delay or disruption caused in the trial by the conduct of the accused are the primary factors to be kept in mind while considering the grant of bail to an accused.

Insofar as the present petitioner is concerned, he has been charged for offence under Section 392 IPC, which is punishable with rigorous imprisonment for a term upto 10 years and Section 394 IPC which is punishable with imprisonment for life or with rigorous imprisonment for a term which may extend upto 10 years, besides fine, in case the accused is found guilty. The petitioner along with co-accused are alleged to have committed a daring robbery in broad day light in a bank which is located in a commercial area. The severity of the punishment, the gravity of the offence and the accusation against the petitioner do not entail grant of bail to him.

Besides this, it deserves to be noticed that the petitioner is involved in 03 other cases with serious allegations, the details of which are as under:-

- (i) FIR No.288 dated 21.09.2018 registered for offence under Section 392 IPC and Section 25 of the Arms Act at Police Station Narnaund District Jind.
- (ii) FIR No.295 dated 28.09.2018 registered for offence under Section 398 and 401 IPC, and Section 25 of the Arms Act at Police Station Narnaund, District Jind; and
- (iii) FIR No.6 dated 03.01.2019 registered for offence under Section 25 of the Arms Act at Police Station Tosham, District Jind.

Though the petitioner is on bail in all the three cases vide orders, Annexures P-6 to P-8, but the nature of allegations levelled against him in all the three FIRs, as are apparent from the perusal of the bail orders, show that the allegations in FIR No.288 dated 21.09.2018 are more or less identical. The antecedents of the petitioner also do not warrant his release on bail.

During the course of pendency of the instant petition, considering the fact that the petitioner has suffered incarceration for more than two years, this Court directed the State to get instructions as to how soon the prosecution can conclude its evidence. In compliance, an affidavit dated 11.09.2021 of the DSP has been filed, wherein it has been submitted that the trial is likely to take time as one of the accused namely Israr alias Isar, who is on bail, is not appearing before the trial Court which has delayed the trial. It has been further submitted that his bail bonds have been cancelled and forfeited and warrants have been issued for his arrest besides issuing notice to the surety and the identifier. It is, therefore, apparent that the co-accused, who is on bail, is not cooperating with the Court and there is a possibility that in case the present petitioner is granted the concession of bail, he may misuse the same. These developments are subsequent to the order passed by a this Court on 16.03.2021, whereby bail has been granted to co-accused Sunil alias Sillu. Still further, the co-accused Israr alias Isar, who is not cooperating, was released on bail by the trial Court vide order Annexure P-4 on the ground that he is suffering from cancer and was undergoing treatment from Rohtak Medical college. As a result, the order passed granting bail to the co-accused will not be of any help to the petitioner. Furthermore, it may be noticed that prosecution is yet to produce some eye-witnesses in its evidence, besides the CCTV footage. So mere

reliance on the ocular evidence of three bank officials will not advance the case of the petitioner.

Not only this, the present petition is a second attempt to seek bail after the first petition was dismissed on 27.10.2020. No change in the circumstances could be brought forth by the counsel for the petitioner during the course of arguments. Mere custody of a few more months alone, cannot be considered to be a change in the circumstances. Filing of subsequent petition for bail amounts to seeking review of the earlier order, which is not permissible in criminal law.

As a result, the petition being bereft of any merit and is ordered to be dismissed.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

16.09.2021
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No