

CRM-M-43343-2021

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

(212)

CRM-M-43343-2021.
Date of Decision:-26.10.2021.

Yousuf and another

.....Petitioners

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Dhirender Chopra, Advocate for the petitioners.

Mr. Praveen Bhadu, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

This is the first petition under Section 439 of Cr.P.C. for grant of regular bail to the two petitioners in FIR No.119 dated 05.05.2021, registered under Sections 395, 397 of IPC, at Police Station Hathin, District Palwal (Haryana) [Section 412 of IPC, added later on].

Learned counsel for the petitioners has submitted that in the present case, as per the prosecution case, 10-11 boys have stolen some construction material. It is submitted that the petitioners were arrested on 06.05.2021 and the challan has already been filed in the present case and as per the challan, no recovery has been made from the petitioners, either of any construction material or any weapon. It is submitted that the petitioners have been falsely implicated in the present case. It is also submitted that

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there are 14 witnesses and none of them have been examined as yet and, thus, the trial is likely to take time, moreso, in view of the present pandemic situation and, thus, prayed for grant of regular bail to the petitioners.

Learned State counsel, on the other hand, has opposed the present petition and has submitted that in fact, petitioner No.1 Yousuf was named in the FIR itself and the petitioners are involved in one more case under Section 379 of IPC.

Learned counsel for the petitioners, in rebuttal, has submitted that even as per the allegations in the FIR, petitioner No.1-Yousuf is not the person who was allegedly holding the pistol and no recovery of any pistol has been made from him or the other petitioner. It is submitted that the petitioners are already on bail even in the other case. In support of his arguments, learned counsel for the petitioners 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**, to contend that it is the facts and circumstances of the present case which are primarily to be considered for the purpose of grant of rejection of bail. The relevant portion of paragraph 6 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 the learned counsel for the parties.

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Keeping in view the above said facts and circumstances, moreso, the fact that no recovery of any construction material or weapon has been made from the petitioners and the petitioners have been in custody since 06.05.2021 and the challan has already been presented in the present case and there are as many as 14 witnesses and none of them has been examined and, thus, the trial is likely to take time and also in view of the law laid down in Maulana Mohd.'s judgment (supra), the present petition for regular bail deserves to be allowed.

Accordingly, the present petition is allowed and the petitioners are ordered to be released on bail on their furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to the fact that they are not 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 application.

(VIKAS BAHL)
JUDGE

October 26, 2021.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No