

CRM-M-2662-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-2662-2022  
Reserved on: 21.02.2022  
Pronounced on: 03.03.2022

Himanshu Gaghat @ Mukul ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Aashna Gill, Advocate for the petitioner.

Mr. Rajat Gautam, DAG, Haryana.

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ANOOP CHITKARA, J.

| FIR No. | Dated      | Police Station                                | Sections                                                                                                                                               |
|---------|------------|-----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| 338     | 22.06.2021 | City Kaithal,<br>District Kaithal,<br>Haryana | 148, 149, 307, 323, 354, 452 & 120-B<br>IPC (later on Sections 325, 302 & 34<br>IPC added and Sections 148, 149, 307,<br>354, 452 & 120-B IPC deleted) |

1. The petitioner, incarcerated upon his arrest in the FIR captioned above, has come up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.
2. As per bail application and the response of the State, the petitioner has following criminal history:

| Sr. No. | FIR No. | Date       | Offences under Sections                  | Police Station              |
|---------|---------|------------|------------------------------------------|-----------------------------|
| 1.      | 448     | 03.12.2016 | 323, 326, 307, 506 & 34 IPC              | Civil Line Siwan<br>Kaithal |
| 2.      | 365     | 15.08.2017 | 148, 149, 323, 324, 341, 506<br>& 34 IPC | City Kaithal<br>(acquitted) |
| 3.      | 66      | 24.03.2019 | 25-54-59 of Arms Act                     | Kalayat                     |
| 4       | 234     | 24.05.2019 | 148, 149, 323, 326, 452 &<br>506 IPC     | City Kaithal                |

3. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family. Referring to order dated 24-11-2021 passed in CRM-M-47533-2021, and stated that now the complainant stands examined and he turned hostile, and did not support the case of the prosecution, as such the petitioner is entitled to bail.

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4. The contention on behalf of the State is that the other crucial witnesses are yet to be examined, the petitioner has criminal antecedents, and bail encourages habitual offenders.

REASONING:

5. In Paramjeet Singh v. State of Punjab, CRM-M 50243 of 2021, this court observed,

While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles.

6. A perusal of the petition does not refer to any averment based on which this court is assured that if this recidivist is released on bail, then he shall not indulge in criminal behavior.

7. The contention on behalf of the petitioner is that the complainant turned hostile and did not support the prosecution. However, this argument shows the influence the accused wielded even when in prison. While passing the previous order, this court had never assured the petitioner of bail, and criminal history was still to be considered. Now, merely because the eye witness who was injured in the assault has turned hostile would not be a defining circumstance to grant bail.

8. Given above, the petitioner fails to make out a case for bail. However, the petitioner may file a bail application before the trial after examination of all witnesses is over. If such a petition is filed, the trial court shall not be influenced by any of the previous bail orders passed in the FIR mentioned above.

9. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

**Petition dismissed in aforesaid terms.** All pending applications, if any, stand disposed.

**(ANOOP CHITKARA)**  
**JUDGE**

March 03, 2022  
anju rani

Whether speaking/reasoned: Yes  
Whether reportable: No