

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-4577-2022(O&M)
Date of decision : 30.03.2022

Shamsher

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Kartar Singh, Advocate
for the petitioner.

Mr.Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

CRM-8591-2022

Allowed as prayed for.

Annexure P-4 is taken on record subject to all just exceptions.

CRM-M-4577-2022

This is a second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.164 dated 19.07.2021 registered under Sections 148, 149, 452, 323, 324, 325, 326 and 506 IPC at Police Station Bhuna, District Fatehabad.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 30.07.2021 and even after the withdrawal of first bail application on 29.11.2021, several dates have been given but no prosecution witness has been examined. Specific reference has been made to zimni orders which would show that although the petitioner

not even a single witness has been examined out of 18 prosecution witnesses. On 22.02.2022 PWs Mukesh, Kavita, Dinesh and Ajit were bound down but were absent on the said date and even on 22.03.2022 exemption was sought by the said witnesses for appearance. It is further submitted that trial is being delayed by the complainant party. It is also submitted that the petitioner has been attributed two injuries, one of which is grievous but the petitioner is not involved in any other case. It is prayed that keeping in view the custody of the petitioner and also the fact that the present case is triable by the Magistrate, the petitioner be granted concession of regular bail.

Learned State counsel, on the other hand, has opposed the petition for regular bail and has submitted that it is the petitioner who had caused grievous injury to the complainant with an axe. However, the other facts have not been disputed by learned counsel for the petitioner.

This Court has heard learned counsel for the parties and has perused the paper book.

The present petition is the second bail petition as first bail petition was withdrawn on 29.11.2021 at that stage, by the petitioner. The petitioner has been alleged to have given grievous injury to the complainant. Learned counsel for the petitioner has referred to zimni orders after the said withdrawal which shows that on 28.12.2021, although the petitioner was produced through V.C. but no witness was examined and the case was adjourned to 11.01.2022. Thereafter on three dates, the Judicial Officer was not holding the Court. On 08.02.2022, the petitioner was produced but no prosecution witness was present and the matter was adjourned to 22.02.2022. On 22.02.2022, the following order was passed:-

“Present: Sh. Pradyumn, APP for the State assisted by Sh.Pardeep Beniwal, Advocate for complainant. Accused Shamsher in custody (produced through VC) represented by Sh. B.S. Sharma, Advocate. Accused Dilbagh Singh, Suresh and Ramesh are on bail represented by Sh. G.P. Trar, Advocate.

Acused Shamsher has been produced before me in custody through VC. PWs Mukesh, Kavita, Dinesh and Ajit are absent today despite the fact that they were bound down for today. An application seeking exemption from personal appearance of the said witnesses has been filed. Heard. For the reasons mentioned in the application, the same stands allowed. Learned counsel for the complainant submitted that some accused are on anticipatory bail in this case and their challan is not filed till date. Heard. Let status report be called from SHO P.S. Bhuna for 08.03.2022. The accused Shamsher is remanded to judicial custody till then on which date he be produced before the court through video conferencing.

*(Meeta Kohli)
JMIC, Fatehabad
UID no. HR-0337*

22.02.2022”

A perusal of the above order would show that PWs Mukesh, Kavita, Dinesh and Ajit were absent despite them being bound down for that day. Thereafter again on 08.03.2022, the charges were framed and on 22.03.2022 the following order was passed:-

“Present: Sh. Pradyumn, APP for the State. Accused Manju, Krishna, Anju, Ragni and Suman are on bail represented by Sh. Subhash Karwasra, Advocate. Accused Dilbag Singh, Suresh and Ramesh are on bail represented by Sh. G.P. Trar, Advocate. Accused Shamsher in custody (produced through VC) represented by Sh. B.S. Sharma, Advocate.

Accused Shamsher produced before me in custody through VC.

An application for exemption from personal appearance of witnesses namely Ajit, Dinesh, Mukesh wife of Ajit and Kavita d/o of Ajit Shubham moved by their counsel. Heard. Keeping in view facts mentioned in the application same stands allowed and personal appearance of witnesses is exempted for

today only.

From perusal of file, it is clear that the inadvertently notice of accusation was served upon accused Dilbag Singh, Shamsher, Sureh and Ramesh on 30.11.2021 instead of framing of charge-sheet on them. Said mistake is clerical in nature and needs rectification. No objection is raised by either side and charge are re-framed upon accused accused Dilbag Singh, Shamsher, Sureh and Ramesh and they were charge-sheeted u/s 148, 149, 323, 324, 325, 326, 452, 506 of IPC. To which they pleaded not guilty and claimed trial. Accused Shamsher in custody present through VC and charge-sheet is signed by the counsel presence of accused through VC.

Case is adjourned to 05.04.2022 for prosecution evidence. Till then accused Shamsher be kept into protective custody and be produced before the Court on the date fixed. Witnesses be summoned for the date fixed.

*(Meeta Kohli)
JMIC, Fatehabad
UID No. HR-0337/*

Date of order: 22.03.2022”

A perusal of the said order would show that the application for exemption for personal appearance of the witnesses was sought and thus no witness was examined. There are 18 prosecution witnesses and none of them have been examined and thus, the trial is likely to take time. From the abovesaid zimni orders, it also seems that it is the complainant party which is delaying the trial. The petitioner has been in custody since 30.07.2021 and investigation in the present case is complete and the petitioner is not involved in any other case. Even after 29.11.2021 no evidence has been recorded and the matter is pending and has been adjourned without any fault of the petitioner and the petitioner has suffered further incarceration for four months, thus entitling the petitioner to file the present second bail petition.

Keeping in view the abovesaid facts and circumstances, 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 case.

However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

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.

(VIKAS BAHL)
JUDGE

March 30, 2022
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No