

CRM-M-5076-2022 (O&M)

216

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

CRM-M-5076-2022 (O&M).
Decided on : July 27, 2022.

Varun Kumar @ Ashu @ Vinda

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Mayank Sharma, Advocate for the petitioner.

Mr.Munish Sharma, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is the first petition filed under Section 439 Cr.P.C., praying for the grant of regular bail to the petitioner in FIR No.280 dated 26.7.2019, under Sections 148, 149, 323, 307 and 506 IPC (Section 302 IPC added later on) and under Sections 25, 27, 54 and 59 of the Arms Act, registered at Police Station Ladwa, District Kurukshetra.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 10.8.2019 and there are 35 witnesses out of

CRM-M-5076-2022 (O&M)

which, only 16 witnesses have been examined, and thus, the trial is likely to take time. It is further submitted that in the present case even the cause of death of the deceased Amit Thakur has not been ascertained. A reference has been made to the post mortem report as per which it has been stated that the cause of death will be given after receiving reports of HPE of viscera and as per the report of the viscera, it has been stated that no opinion could possibly be given after having examined lungs as they showed advance autolytic changes. Further, reference has been made to paragraph 3 of the order dated 24.12.2021, vide which the bail application of the petitioner has been rejected in which the contention of the petitioner before the learned Additional Sessions Judge, was noticed to the effect that there is a possibility that the deceased might have died on account of medical negligence because as per death summary given by the Cheema Medical Complex, where the deceased had succumbed, it is specifically mentioned that initially the deceased was admitted in another hospital where he was incubated and after he vomited, and same was inhaled by him which went into his lungs and might have caused infection leading to A.R.D.S. thereby causing aspirational pneumonia. It is further submitted that none of the accused persons have been attributed any specific injury and the co-accused of the petitioner namely Hardik Chawla, who is similarly placed as the present petitioner, has been granted regular bail vide order dated 13.12.2021 (Annexure P-7) passed in CRM-M-24108-2020 after considering the fact

CRM-M-5076-2022 (O&M)

that he has been in custody for more than 2 years. It has been submitted that the custody period of the petitioner is more than 2 years and 11 months. It is further submitted that one of the injured Balwinder has been examined as PW.6, and he has been declared hostile. It is also submitted that PW.7 namely Manish (cousin of the deceased), PW.8 Ramesh Kumar (father of the deceased) and Virender PW.12 (cousin of the deceased) have also been declared hostile in the present case.

Learned counsel for the State, on the other hand, has submitted that the petitioner is involved in three other cases and does not deserve the concession of regular bail as he, along with other co-accused, had participated in the offence which resulted in the death of Amit Thakur and injuries to the complainant and one Balwinder.

Learned counsel for the petitioner, in rebuttal, has submitted that the petitioner has been has been acquitted in 2 out of the three cases and in third case, he is on bail and he has relied upon a judgment of Hon'ble Supreme Court in ***“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”***, reported as ***2012 (2) SCC 382***, to contend that the facts and circumstances of the present case are to be seen and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the

CRM-M-5076-2022 (O&M)

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 and has perused the paper book.

The petitioner is in custody since 10.8.2019 and there are 35 witnesses, out of which only 16 witnesses have been examined, and thus, the trial is likely to take time. The co-accused of the petitioner Hardik Chawla who is similarly placed as the present petitioner, has been granted regular bail vide order dated 13.12.2021 (Annexure P-7) passed by this Court in CRM-M-24108-2020. There are debatable points in the present case including the point with respect to the cause of death of the deceased and the same would finally be adjudicated during the course of the trial.

Keeping in view the above said facts and circumstances, the present petition is allowed and it is ordered that the petitioner shall be released on bail on her furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate, and subject to his being not required in any other case.

CRM-M-5076-2022 (O&M)

However, it is made clear that in case, any act is done by the petitioner to threaten 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 an 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.

Pending applications, if any, shall also stand disposed of accordingly.

July 27, 2022.
raj arora

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No