

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-6066-2022

Date of decision : 18.02.2022

Kasam

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Farukh Abdullah, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

This is a second petition unde Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.286 dated 11.08.2021 registered under Section 379-A IPC at Police Station Hodal, District Palwal.

Learned counsel for the petitioner has submitted that in the present case, the FIR was registered on the complaint of Love Kumar against an unknown person and the petitioner had filed a petition for regular bail which he had withdrawn on 24.11.2021 and after 24.11.2021 the said complainant has been examined as PW-3 on 04.02.2022 and the said complainant has specifically stated that he has never seen the present petitioner nor he had identified him before the police and has thus, exonerated the present petitioner. It has further been submitted that the said complainant was the eye witness of the offence. It has also been submitted

witnesses, four witnesses are yet to be examined and the trial is likely to take time more so, in view of the present pandemic.

Learned State counsel, on the other hand, has opposed the present petition and has submitted that the petitioner is involved in two more cases of a similar nature. It has been submitted that out of seven witnesses, three witnesses have already been examined and thus, the trial is proceeding further.

Learned counsel for the petitioner, in rebuttal, has submitted that the petitioner is on bail in both the cases and has relied upon the 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 while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion 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 learned counsel for the parties and has perused the paper book.

It is not in dispute that the FIR was registered on the statement of Love Kumar against an unknown person. In the FIR, it had been stated that the said complainant could recognize the snatcher. The said

been examined as PW-3 and he has specifically stated in his examination-in-chief that he had never seen the present petitioner and never identified him before the police and thereafter, the said complainant has been turned hostile. The petitioner has been in custody since 12.08.2021 and the challan has already been presented in the present case and out of the seven witnesses, four witnesses are yet to be examined.

Keeping in view the above said facts and circumstances, as also the law laid down in *Maulana Mohd. Amir Rashadi's* case (supra), 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.

It is made clear that in case the present petitioner indulges in any criminal activity in future, it would be open to the State to move an application for cancellation of bail.

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

February 18, 2022

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No