

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

209

CRM-M-7374-2022
Decided on : 05.07.2022

Gagan

. . . Petitioner

Versus

State of Haryana

. . . Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

PRESENT: Ms. Garima Sharma, Advocate
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

VIKAS BAHL, J. (Oral)

This is a second petition filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No. 409 dated 08.11.2020 under Sections 392 and 34 of the Indian Penal Code, 1860 registered at Police Station Taraori, District Karnal.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 27.11.2020 and the investigation in the present case has been completed and the challan has already been presented and there are as many as 11 prosecution witnesses, none of whom have been examined, thus, the trial is likely to take time. It is further submitted that the recovery in the present case has already been effected and as per the challan, out of the alleged snatched amount of Rs. 50,000, Rs.6,000/- has been recovered from the petitioner. It is

contended that a perusal of the FIR would show that it has been stated by the complainant that he himself sat in the car in which the petitioner and the other co-accused were already there and thus, the ingredients of kidnapping are not made out in the present case.

Learned State counsel, on the other hand, has opposed the present application for regular bail and has submitted that the petitioner is involved in 3 other cases and in one of the cases i.e. FIR No. 757 of the year 2015, the petitioner has already been convicted.

Learned counsel for the petitioner, in rebuttal to the said argument, has submitted that in FIR No. 947 dated 14.10.2015, the petitioner has been acquitted vide judgment dated 31.03.2016 and even in the FIR No. 757, in which the petitioner has been convicted, the petitioner has been granted the concession of suspension of sentence in the appeal filed by the present petitioner. In support of his contention, learned counsel for the petitioner has further submitted that as per settled law, it is the facts of the present case which are required to be considered for the purpose of deciding the present bail application. For the said proposition, learned counsel for the petitioner has relied upon 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 reference has been made to the relevant portion of paragraph 6 which 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 paperbook.

The petitioner has been in custody since 27.11.2020 and the challan in the present case has already been presented and there are as many as 11 prosecution witnesses, none of whom have been examined. The earlier bail application of the petitioner was dismissed as withdrawn at that stage on 10.09.2021 and even after the passing of the said order, a period of more than 9 and a half months has elapsed and yet, the trial has not made any progress as no person has been examined till date and thus, it entitles the petitioner to file the second regular bail application. The recovery has already been effected from the present petitioner and as per the FIR, it is the complainant who sat in the car in which the petitioner and the other co-accused were stated to be already sitting.

Keeping in view the abovesaid facts and circumstances and also in view of the law laid down in Maulana's (*supra*) case, 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, 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.

It is made clear, in case, the petitioner threatens or influences any witness, it would be open to the State to move an application for cancellation of the present regular bail granted to the petitioner.

(VIKAS BAHL)
JUDGE

July 5th, 2022
Mehak

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