

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-8432-2022

Date of Decision:-20.05.2022

Avtar Singh.

.....**Petitioner.**

Versus

State of Punjab.

.....**Respondent.**

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. L.S. Sidhu, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, DAG Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this second petition is for the grant of regular bail under Section 439 Cr.PC in case FIR No.92 dated 10.08.2021 under Sections 382, 411, 120-B, 201, 392 IPC and Sections 25, 54, 59 of Arms Act registered at Police Station Kulgari, District Ferozeplur.

The brief facts of the case are that the statement of Emmanuel was recorded to the effect that he was a student of +2 and was also working as a Postman at Post Office Bajidpur. On 10.08.2021 at about 10.00 am he had brought parcels from Smt. Usha who was working as post master in Bajidpur post office which he kept in his kit bag and also placed his mobile phone in the same bag and went to distribute the parcels on a motor cycle.

At about 11.20 am when he reached near the cremation ground a motor

cycle Splendor black colour came there with two Sikh boys riding it. The faces of both the persons were covered with mask and they had turbans tied on their head. The sikh person who was a pillion rider took out a country made pistol and asked him to hand over the kit bag. Suddenly the face mask of the rider of the motor cycle got removed and he recognized the said person as one Sukhwinder Singh son of Mukhtiar Singh. Both the persons snatched his bag and ran towards Malwal Qadim. Based on the aforesaid statement, the present FIR came to be registered.

The Counsel for the petitioner submits that the identity of the petitioner is not clear. His name is Avtar Singh and he has been mentioned as Vicky @ Gurjant Singh in the FIR. It is further stated that the petitioner is in custody since 06.09.2021 and since the investigation stands completed the further incarceration of the petitioner is not required.

The Counsel for the State on the other hand submits that the allegations against the petitioner are serious and he along with co-accused Gurjant Singh has committed a heinous offence and he is involved in 02 other FIRs.

I have heard counsel for both the sides at length.

The petitioner is a young boy of the age of 20 years. No recovery has been effected from him in the present case. 17 prosecution witnesses are to be examined during the course of trial and none have been examined so far. Therefore, the trial is not likely to be concluded in near future.

So far as the pendency of the two other FIRs is concerned that by itself would not disentitle the petitioner to the grant of regular bail. In the context of multiple cases registered against the accused the Hon'ble

Supreme Court in ***Maulana Mohd. Amir Rashadi Vs. State of U.P. & Anr.***

2012(1) R.C.R.(Criminal) 586 has held as under:-

“ It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. 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 High Court in ***Rajender Singh V/s State of Haryana CRM-40431-2021 in CRA-D-1640-DB-2014 Decided on 19.01.2022*** held as under:-

“ We are quite conscious of the fact that the applicant in the present case is a prior convict, and therefore, his case would be an exception to the ratio of the law laid down in Daler Singh’s case (supra). However, on having examined the factual matrix in the case of the applicant, we are inclined to suspend the rest of the sentence of the applicant for the following reasons:-

*(i) The applicant has undergone approximately 09 years of his substantive sentence of 12 years i.e. 03 years more than the prescribed period under **Daler Singh’s case (supra)**.*

(ii) The applicant was convicted in FIR No. 244 dated 10.05.2006 in which he was sentenced for 02 years, and he has undergone the same. In the second conviction in FIR No. 84 dated 21.07.2006, the applicant was sentenced for 10 years and he has been granted bail vide order dated 03.12.2009. So, as on date, the applicant is in custody only in the present

case.

(iii) *If pendency of other FIRs is the only consideration for denial of bail, then whenever a convict/under- trial applies for bail, the same would be denied simply looking at the pendency of another case. While, it is true that the grant of bail/suspension of sentence would have to be looked at in the larger context of the criminal antecedents of the accused/convict, it is equally true that the appreciation of evidence in the trial/appeal would have to be with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases against him. Therefore, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions would put the accused in vicious loop of never being granted bail because the bail in each case would be denied due to the pendency of another case/conviction. This would clearly be violative of the right to speedy trial/expeditious disposal of an appeal as recognized under Article 21 of the Constitution of India, as the accused would never be granted bail in any case leading to indefinite periods of incarceration assuming of course that the appeal is not heard within a reasonable period of time.*

(iv) *The appeal, in the present case, which stands admitted on 14.11.2014, is not likely to be heard in the near future due to the COVID-19 pandemic, which does not show sign of abating.*

In view of the aforesaid discussion, we are of the view that the applicant ought to be released on bail having undergone 08 years 11 months and 19 days of his substantive sentence of 12 years.”

Keeping in view the aforesaid facts and the period of custody undergone by the petitioner as also the fact that the trial is not likely to be

concluded in near future, without commenting on the merits of the case, the present petition is allowed and the petitioner-Avtar Singh son of Sukhdev Singh is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing that he is not involved in any other crime other than the present case.

If the petitioner or his family members/associates make any attempt to contact/threat/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted vide this order.

Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

May 20, 2022
Vinay

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