

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

224

CRM-M-8523-2022(O&M)
Date of Decision : April 26, 2022

BINDUSAR

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. S.P.Arora, Advocate and
Mr. Himanshu Arora, Advocate
for the petitioner.

Mr. Ranvir Singh Arya, Addl. Advocate General, Haryana.

JASGURPREET SINGH PURI. J. (Oral)

CRM-15009-2022

The present application has been filed for placing on record
Annexures P-9 to P-9E.

For the reasons recorded in the application, the same is
allowed and the accompanying Annexures P-9 to P-9E are taken on
record, subject to all just exceptions.

Main case

The present is a fourth successive bail petition filed by the
petitioner seeking grant of regular bail under Section 439 of the Code of
Criminal Procedure in case FIR No.69 dated 19.2.2021 under Sections
364A, 386, 506, 34, 120B, 109 IPC and Sections 25, 29 of Arms Act,
registered at Police Station Civil Lines, District Hissar.

It has been submitted by the learned counsel for the

petitioner that he had earlier withdrawn two bail petitions vide orders dated 24.5.2021 and 8.7.2021 as at that point of time although the challan was presented but no prosecution witness was examined and even charges were not framed and thereafter when he filed the third petition which was, however, dismissed by this Court on 24.9.2021 primarily on the ground that the petitioner was not able to show any change in circumstance.

The learned counsel for the petitioner has submitted that thereafter there had been a change of circumstance since after the dismissal of the earlier bail petition, charges have been framed on 30.9.2021 and thereafter two official witnesses have been examined. He submitted that the petitioner is in custody from 9.3.2021 which is more than one year and as per the allegation contained in the FIR one person, namely, Sanjay Gupta @ Sanjay Mittal was allegedly abducted by some persons and they had raised a demand of Rs.10 lacs. The FIR was lodged at the behest of one Rahul, who is the employee of the Hospital. The aforesaid Sanjay Gupta @ Sanjay Mittal was the partner and so far as the present petitioner is concerned, he is also partner of the hospital. He further submitted that there was some financial dispute between the petitioner and his partner, namely, Sanjay Gupta @ Sanjay Mittal and for that purpose, the present FIR got lodged for the purpose of falsely implicating the petitioner. He submitted that in fact no body was abducted by any body and it was only a concocted story played by Sanjay Gupta @ Sanjay Mittal himself. He further submitted that be that as it may, the petitioner is in custody for more than one year and has

referred to the *Zimni orders* passed by the learned trial Court after the framing of the charges vide Annexures P-9 to P-9E wherein the material witnesses, namely, Sanjay Gupta @ Sanjay Mittal and Rahul did not appear for a number of times and they have been summoned through bailable warrants for three times and still they did not come to the Court for the purpose of deposition which itself reflects that a concocted story was made by the aforesaid Sanjay Gupta @ Sanjay Mittal himself. He submitted that from the aforesaid conduct of the complainant, namely, Rahul as well as aforesaid Sanjay Gupta @ Sanjay Mittal, the petitioner may be considered for the grant of regular bail and also apart from the same, the petitioner has clean antecedents and is not involved in any other case and has submitted that the earlier bail petitions filed by the petitioner would not become a bar for entertaining the present petition.

On the other hand, the learned State counsel has submitted that it is correct that the petitioner is in custody from 9.3.2021 and only two official witnesses have been examined till date. He has also submitted that it is correct that after the dismissal of the earlier bail petitions filed by the petitioner, charges were framed and two official witnesses were examined. He has, however, opposed the grant of regular bail to the petitioner on the ground that the allegations against the petitioner are that he alongwith other co-accused had raised a demand of Rs.10 lacs and has also submitted that other co-accused was also apprehended alongwith the amount and there is every possibility that in case the petitioner is released on bail then he may abscond from justice or may influence the witnesses.

I have heard the learned counsels for the parties.

So far as the present petitioner is concerned, he has not been named in the FIR and the other co-accused, namely, Raja Patan has been named in the FIR and the petitioner is in custody from 9.3.2021. So far as the maintainability of the present bail petition is concerned, earlier the petitioner had filed three bail petitions out of which two were dismissed as withdrawn in view of the fact that even charges have not been framed and thereafter the third bail petition was dismissed on the ground that the third bail petition would not be sustainable in view of the fact that there was no change in circumstance. However, after the dismissal of the third bail petition, charges have been framed and two official witnesses have been examined and, therefore, it would certainly be a changed circumstance and, therefore, the successive bail petition filed by the petitioner would certainly be maintainable. It has not been disputed by the learned State counsel that the petitioner is not involved in any other case and has clean antecedents. The objection raised by the learned State counsel that in case the petitioner is released on bail then he may influence the witnesses or may abscond from justice also deserves to be considered. On a specific query being raised to the learned State counsel as to whether there is any sufficient material available with the State in support of the aforesaid objection, the learned State counsel was not able to answer the same.

As per the *Zimni orders* produced by the learned counsel for the petitioner vide Annexures P-9 to P-9E, the complainant, namely, Rahul and who is alleged to have been abducted, namely, Sanjay Gupta

@ Sanjay Mittal have not chosen to step into the witness box to depose during the trial despite the fact that 3 times bailable warrants were issued against them. In such a situation, considering the totality of the facts and circumstances and the fact that the petitioner has faced incarceration for more than one year, this Court is of the considered opinion that the petitioner is entitled for the grant of regular bail.

Consequently, the present petition is allowed. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

April 26, 2022

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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No