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

CRM-M-8906-2022

Date of decision : 16.11.2022

Rohit Dagar @ Bobby

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Amit Jhanjhi, Sr. Advocate with
Mr. Amitabh Tewari, Advocate and
Mr. Himmat Singh Sidhu, Advocate and
Mr. Shivam Sharma, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

Mr. Sanjiv Sheoran, Advocate for the complainant.

VIKAS BAHL, J. (ORAL)

This is the second petition filed under Section 439 of Cr.P.C.
for grant of regular bail to the petitioner in FIR No.393 dated 16.11.2019
registered under Sections 302, 120-B, 452 and 34 of Indian Penal Code,
1860 and Section 25 of the Arms Act, 1959 at Police Station Bhondsi,
District Gurugram, Haryana.

Learned Senior Counsel for the petitioner has submitted that
the petitioner is in custody since 07.12.2019 and there are 45 prosecution

witnesses, out of which, 4 prosecution witnesses have been examined and thus, the conclusion of the trial is likely to take time. It is further submitted that first bail application of the petitioner was dismissed as withdrawn at that stage on 21.09.2021 and after the passing of the said order, a period of more than 1 year and 1 month has elapsed and yet, the trial has not made much progress. It is contended that in the present case, an FIR was got registered by Mahesh Kumar @ Nishu who had stated that the incident had taken place in front of him and he had seen the accused persons firing at Ashok (deceased). Learned Senior Counsel for the petitioner has further submitted that after passing of order dated 08.08.2022 by this Court, the said Mahesh Kumar @ Nishu has been examined as PW2 and as per his evidence, it has been stated by him that when he had reached the spot, his brother was lying in an injured condition and in subsequent part of the cross-examination, he had stated that he had come to the house of deceased from his plot when it came to his notice that his brother had been injured by gun shots. It is further submitted that in his cross-examination, the said Mukesh Kumar @ Nishu had even stated that his mother had come out of the house after the incident and that his mother had lifted the injured brother and helped him to come out of the house and when the video footage was shown then the said witness had admitted that neither he, nor his mother, or his children or Naveen were seen in the video footage while coming out of the house at any point of time. It is contended that there are several other infirmities in the statement of said Mahesh Kumar @ Nishu and it is highlighted that

the same would show that he is not an eye-witness of the occurrence in the present case. It is further contended that there are several infirmities in the evidence of PW3-Mahesh son of Rohtash also. It is argued that as per the FIR, Narender, Rohit and Salim took out pistol and fired shots at Ashok and that Salim fired shots upon the chest of Ashok whereas Narender was stated to have fired shots upon left ear and right hand (wrongly translated in the FIR as right ear) of Ashok and the present petitioner was stated to have fired at the waist of Ashok. It is further argued that a perusal of the Death Report (Annexure P-3) would show that there is no specific gun shot injury on the waist of the deceased. It is also submitted there are arguable points in the present case and thus, prays that keeping in view the custody of the present petitioner, the present petitioner be granted the concession of regular bail.

On the other hand, learned State Counsel has opposed the present petition for grant of regular bail to the petitioner and has submitted that the petitioner is involved in three more cases. It is further submitted that Mahesh Kumar @ Nishu has specifically named the present petitioner and also other accused persons and had seen them shooting at Ashok, who had died on account of the injuries suffered in the said incident

Learned Senior counsel for the petitioner, in rebuttal to the said argument, has submitted that out of the abovesaid three cases, two cases are under the Prisons Act and thus, 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 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 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.

In the present case, the petitioner is in custody since 07.12.2019 and out of 45 prosecution witnesses, only 4 prosecution witnesses have been examined and thus, the conclusion of the trial is likely to take time. The first bail application of the petitioner was dismissed as withdrawn at that stage on 21.09.2021 and even after the said date, a period of more than 1 year and 1 month has elapsed and yet the trial has not made much progress. As per the FIR, it is Mahesh Kumar @ Nishu who was stated to be the eye-witness and who had stated that in front of him, the incident had taken place. Learned Senior Counsel for the petitioner has highlighted certain portions of the evidence of PW2- Mahesh Kumar @ Nishu. Relevant portion of the same is reproduced hereinbelow:-

“I am languishing in judicial custody in murder of Manoj resident of Village Alipur. His wife was Sarpanch of Village. I am accused of being a conspirator. I have 2-3 criminal cases registered against me. Volunteered have been acquitted in two other cases as well. My brother deceased Ashok was involved in 25/30 criminal cases. I am not aware of all the cases he was involved in.

xxx xxx

On the day of incident I was present in the house of Ashok along with my brother.

Xxx xxx

My mother had come out of the house soon after the incident and she had sought help. My mother had also lifted my brother and help him to come out of the house. At this stage, the video footage is played and the witness had seen the entire video footage and admits that he, his my mother, his children and Naveen are not seen in the video footage while coming out of the house at any point of time. It is correct that even in the entire footage of DVR as well, I would not be seen coming house out of the house of deceased Ashok.

Xxx xxx

I had come to the house of the deceased from my plot, when it came to my notice that my brother has been injured gun shots.”

A perusal of the above evidence would show that the said PW2 had admitted that in the video footage, neither he, nor his mother, or his children or Naveen were seen coming out of the house at any point of time and he had also stated that when he came to the house of deceased from his plot, it came to his notice that his brother had been injured by

gun shots. The question as to whether he is an eye-witness in the present case or not would be finally adjudicated during the course of trial.

Keeping in view the abovesaid facts and circumstances as well as law laid down in ***Maulana Mohd. Amir Rashadi's*** case (Supra) more so, the custody of the petitioner, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to him not being required in any other case.

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.

16.11.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**