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

CRM-M-8671-2022

Date of decision : 27.10.2022

Amit Gupta

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Krishan Kumar Thakur, Advocate for the petitioner.

Mr. Ramdeep Partap Singh, Sr. DAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is second petition for grant of regular bail to the petitioner in FIR No.119 dated 08.08.2019 registered under Sections 420, 465, 467, 468, 471, 120-B of Indian Penal Code, 1860 at Police Station City Nawanshahar, District SBS Nagar.

Learned counsel for the petitioner has submitted that the present petition is the second petition and the earlier regular bail application filed by the petitioner was withdrawn on 13.10.2021 at that stage and even subsequent to the passing of the same, sufficient period has elapsed so as to entitle the present petitioner to file the present second regular bail application.

Learned counsel for the petitioner has submitted that the

petitioner is in custody since 07.02.2020 and investigation is complete and challan has been presented and there are 26 prosecution witnesses, out of which, none have been examined as yet and thus, the conclusion of trial is likely to take time. It is further submitted that in spite of issuance of non-bailable warrants and bailable warrants against the prosecution witnesses, none of the witnesses have appeared and been examined. Learned counsel for the petitioner has produced on record the zimni orders dated 29.09.2022, 07.10.2022 and 21.10.2022 in support of his arguments, which are taken on record and marked as Mark 'A' (Colly). It is contended that the present case is triable by the Magistrate and is based on documents and thus, further incarceration of the petitioner is not required. It is further contended that no money had been paid to the petitioner and although, the transactions, in the present case, were of the year 2017 but the FIR has been registered in the year 2019. It is argued that although, the petitioner is stated to be Director of M/s Raisal Energy and Metal Ltd. Pune City, Maharashtra, India but the petitioner is not its Director and is only an employee of the said company. It is further argued that although, this Court had dismissed the anticipatory bail application of wife of the petitioner namely Tripti Gupta but an SLP was filed against the said order i.e. Special Leave Petition (Criminal) No.7859-2022 and in the said case, the Hon'ble Supreme Court has been pleased to issue notice of motion and has also granted interim protection to the wife of the petitioner and the said case is still pending.

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 several other cases and is thus, a habitual

offender. It is further submitted that in the present case, the petitioner alongwith other persons, as per the case of the prosecution, had duped the complainant party of an amount of Rs.10 crores.

Learned counsel for the petitioner in rebuttal to the said argument has submitted that the petitioner is on bail in abovesaid 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 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 the learned counsel for the parties and has perused the paper book.

In the present case, the petitioner is in custody since 07.02.2020 (2 years, 8 months and 20 days) and investigation is complete and challan has been presented and out of 26 prosecution witnesses, none have been examined as yet and thus, the conclusion of trial is likely to take time. A perusal of zimni orders dated 29.09.2022, 07.10.2022 and 21.10.2022 would show that in spite of the fact that the prosecution witnesses have been

summoned throughailable and non-ailable warrants, yet the said prosecution witnesses have not appeared. The said zimni orders are reproduced hereinbelow:-

“CHI-72-20 State VS Ganesh Anglo

Present: Ld APP for the State.

Accused No.3 Rakesh Kumar on bail present.

Accused Ganesh Englo not produced.

Accused No.2 Amit Gupta not produced.

Accused Ganesh Englo and Amit Gupta not produced by the jail authorities. Let production warrants of Accused Ganesh Englo and Amit Gupta be issued for 07.10.2022.

As per report, summons sent to PWs at serial No.1 and 2 received back executed, but they have failed to appear before the Court today. Let PWs at serial No.1 and 2 be summoned throughailable warrants in sum of Rs.25,000/- with one surety each in such like an amount returnable for 07.10.2022. PW cited at serial No.3 also be summoned for the date fixed.

(Jagbir Singh Mehndiratta)

Chief Judicial Magistrate

Dated:29.09.2022

(UID NO.PB-0296)

Shaheed Bhagat Singh Nagar.

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Present: Ld APP for the State.

Accused No.3 Rakesh Kumar on bail present.

Accused Ganesh Englo not produced.

Accused No.2 Amit Gupta not produced.

Accused Ganesh Englo and Amit Gupta not produced by the jail authorities. Let production warrants of Accused Ganesh Englo and Amit Gupta be issued for 21.10.2022.

As per report,ailable summons sent to PWs at serial

No.1,2 and 3 received back executed, but they have failed to appear before the Court today. Let PWs at serial No.1,2 and 3 be summoned through non bailable warrants of arrest returnable for 21.10.2022.

(Jagbir Singh Mehndiratta)

Chief Judicial Magistrate

Dated:07.10.2022

(UID NO.PB-0296)

Shaheed Bhagat Singh Nagar.

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CHI-72-20 State VS Ganesh Anglo

Present: Ld APP for the State.

Accused No.3 Rakesh Kumar on bail present.

Accused Ganesh Englo not produced.

Accused No.2 Amit Gupta not produced.

Accused Ganesh Englo and Amit Gupta not produced by the jail authorities. Let production warrants of Accused Ganesh Englo and Amit Gupta be issued for 04.11.2022.

No PW is present. Let PWs at serial No.1,2 and 3 be again summoned through non bailable warrants of arrest returnable for date fixed. Let PWs cited at serial No.11,12 and 13 also be summoned for the date fixed.

(Jagbir Singh Mehndiratta)

Chief Judicial Magistrate

Dated:21.10.2022

(UID NO.PB-0296)

Shaheed Bhagat Singh Nagar.”

The present case is triable by the Magistrate and is based on documents and there are arguable pleas raised by the learned counsel for the petitioner including the plea that no money had been paid to the petitioner by the complainant party and the transactions, in the present case, were of the year 2017 but the FIR has been registered in the year 2019 and that the petitioner is wrongly stated to be Director of M/s Raisal Energy and Metal

Ltd., Pune City, Maharashtra, India, which pleas would be finally adjudicated during the course of the trial.

Keeping in view the abovesaid facts and circumstances as well as 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 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.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

27.10.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**