

219

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

CRM-M-10007-2022

Date of decision : 22.09.2022

Golu

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Prateek Pandit, Advocate for the petitioner.

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

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.82 dated 11.07.2021 registered under Sections 379, 411, 34, 379-B, 482 of the Indian Penal Code, 1860 (Sections 379-B, 482 of IPC have been added later on) at Police Station Navi Baradari, District Jalandhar.

Learned counsel for the petitioner has submitted that the petitioner had earlier filed a petition for grant of regular bail which was dismissed by this Court vide order dated 15.11.2021 (Annexure P-8) and subsequent to the passing of the said order dated 15.11.2021, the co-accused of the petitioner namely Manish Kumar, whose case is identical as the case of the present petitioner, has been granted bail vide order dated 11.02.2022

(Annexure P-9) passed by the Additional Sessions Judge, Jalandhar. It is further submitted that one of the main considerations while granting bail to the said Manish Kumar was that he was in custody since 11.07.2021 and the investigation was complete and recovery had already been effected and thus, no useful purpose would be served by keeping the said accused behind the bars. It is contended that as per the case of the prosecution, two persons i.e. the petitioner and Manish Kumar were apprehended at the spot while driving the motorcycle which was not owned by the petitioner and the said Manish Kumar and it was alleged that the said motorcycle had been stolen by the petitioner and the said Manish Kumar. It is further contended that the petitioner was arrested on 11.07.2021 and he is in custody since then and even after passing of the order dated 15.11.2021, sufficient period has elapsed and out of 28 witnesses, 21 witnesses are yet to be examined and thus, the conclusion of trial is likely to take time. It is argued that the petitioner is not involved in any other case. With respect to maintainability of the second bail application, reliance has been placed upon the judgment of the Hon'ble Supreme Court passed in case titled as **Parvinder Singh Vs. State of Punjab**, reported as **2003(12) SCC 615**, the judgment passed by the Rajasthan High Court (Jaipur Bench) (Full Bench) in case titled as **Ganesh Raj Vs. State of Rajasthan and others** reported as **2005(3) RCR (Criminal) 30**, and also the judgment passed by the Coordinate Bench of this Court in **Kirpal Singh @ Dyal Singh Vs. State of Punjab**, reported as **2000(2) RCR (Criminal) 222**.

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 and Manish Kumar were the persons who were caught at the spot while riding the stolen motorcycle. It is further submitted that other recoveries have also been effected from the present petitioner and Manish Kumar. He has placed on record the custody certificate of the petitioner, as per which, the custody period as stated by the learned counsel for the petitioner stands reaffirmed.

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 11.07.2021 and investigation is complete and the challan has been presented and out of 28 witnesses, 21 witnesses are yet to be examined and thus, the conclusion of trial is likely to take time. The recoveries have also been effected from the present petitioner and the petitioner is stated to be not involved in any other case. The first bail application of the petitioner was dismissed on 15.11.2021 by this Court and subsequent to the same, co-accused of the petitioner namely Manish Kumar, who is similarly placed as the present petitioner, has been granted regular bail vide order dated 11.02.2022 passed by the Additional Sessions Judge, Jalandhar. As per the case of the prosecution, the present petitioner as well as Manish Kumar were both apprehended at the spot while driving the stolen motorcycle. The allegations against the petitioner and Manish Kumar are thus, similar in nature. The Additional Sessions Judge, Jalandhar while granting bail to the said Manish Kumar, had taken into consideration the fact that he was in custody since 11.07.2021 and the conclusion of trial was likely to take time and no useful purpose would be served in detaining him any further.

A Coordinate Bench of this Court in ***Kirpal Singh @ Dyal Singh's*** case (Supra) has held as under:-

“xxx xxx

5. *Learned counsel for the State on the other hand contends that in the supplementary statement recorded on 10.2.1999 i.e. the day next after the date of F.I.R. it has been stated that the petitioner-hereinafter had given kick blows to the deceased, and that the earlier petition filed by the petitioner in this Court has been dismissed by this Court because of this attribution made to the petitioner.*

Xxx xxx

7. *The question now is whether even though earlier application filed by the petitioner has been dismissed by this Court, the petitioner could be released on bail taking into consideration the order passed by this Court granting bail to a co-accused against whom also similar allegations have been made.*

8. *The Madhya Pradesh High Court in **Vishnu Ram Chandra Maheshwari v. State of M.P., 1999(3) All India Criminal Law Reporter 645** had the occasion to consider this point and that Court relied upon the decision in **Shobha Ram v. State of U.P., 1992 Criminal Law Journal 1371**, wherein it was held as follows:*

"Where an application for bail filed by accused-applicant and a co-accused is rejected by High Court, and subsequently the co-accused has been granted bail on second application, the accused is also entitled to be granted bail on his second application on ground of parity. The claim of parity should not be denied merely because the other co-accused, who was granted bail, did not inform the Court about the rejection of bail application of other co-accused by different Benches."

9. That Court also relied upon another decision in ***Nanha v. State of U.P., 1993 Criminal Law Journal 938*** wherein it was held as follows:

"If on examination of a given case, it transpires that the case of the applicant seeking bail is identical, similar to the accused, who has been bailed out, then the desirability of consistency will require that the applicant should also be released on bail."

10. Relying upon these decisions, the Madhya Pradesh High Court granted bail to the applicant (whose bail application had been earlier rejected) on the ground of parity."

A perusal of the above judgment would show that in a case, in which the earlier regular bail application had been dismissed, the subsequent bail application of the accused therein was allowed after taking into consideration the fact that the co-accused of the petitioner therein had been released on bail and after considering the judgments of various Courts to the effect that on the ground of parity, the subsequent bail application would be maintainable.

The Hon'ble Supreme Court in ***Parvinder Singh's case*** (Supra) has held as under:-

"2. In Criminal Appeal No.57-DB of 2001 an application for grant of bail was filed by the appellant being Criminal Miscellaneous No. 53713 of 2002. The bail application has not been examined on merits and has been dismissed holding that it is not maintainable, as against an earlier order of the High Court rejecting bail, a special leave petition was filed before this Court which was dismissed as withdrawn. The second ground stated in the impugned order is that the bail application has been rejected on three earlier occasions.

The fact that earlier bail application was rejected and the special leave petition was dismissed as withdrawn would not make the fresh bail application legally not maintainable. The High Court can always consider fresh circumstances and subsequent events. The same would be the position regarding the earlier rejections. In this view, we are unable to sustain the impugned order dated 7th January, 2003. The bail application (Criminal Miscellaneous No. 53713 of 2002) shall be decided afresh on merits. We request the High Court to decide the application before the close of the court for winter vacation.

3. The appeal is disposed of accordingly.”

A perusal of the above judgment would show that it was observed by the Hon'ble Supreme Court that even in case, the earlier bail application of the accused was rejected and the SLP against the same was dismissed as withdrawn, the same would not make the fresh bail application legally not maintainable and the Hon'ble Court can consider the subsequent bail application after taking into account fresh circumstances and subsequent events.

Hon'ble Full Bench of Rajasthan High Court in **Ganesh Raj's case** (Supra) has held as under:-

“Speedy trial is a Constitutional right of the accused provided to him by Article 21 of the Constitution. If first application of the accused who is in custody is dismissed on merits and the trial is delayed, the accused has a right to make second bail application on the ground of delayed trial Section 439 relates to Constitutional right of the accused whereas Section 438 to his statutory right. The provisions of Section 438 should not be put to abuse at the instance of unscrupulous accused.”

A perusal of above judgment would show that it has been observed that speedy trial is a constitutional right of the accused provided to him under Article 21 of the Constitution of India and in case, the accused is in custody and his first bail application was dismissed on merits and the trial is being delayed, then, the accused has a right to file a second bail application on the ground of delayed trial. It was further observed that Section 439 relates to the constitutional right of the accused.

The law laid down in the abovesaid judgments is applicable to the facts of the present case also.

Keeping in view the abovesaid facts and circumstances and also in view of the law laid down in the abovesaid judgments, 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.

22.09.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**