

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

**CRM-M-13040-2022
Date of Decision: 12.05.2022**

Sunil Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Arihant, Advocate
for the petitioner.

Mr. Vikrant Pamboo, DAG, Haryana.

JASJIT SINGH BEDI, J.(Oral)

The prayer in this petition is for the grant of regular bail under Section 439 Cr.PC in case FIR No.304 dated 22.08.2021 under Sections 380, 420, 454 IPC registered with Police Station Hodal, District Palwal.

2. The FIR came to be registered on the complaint of one Harender son of Raj Singh who stated that on 22.08.2021 at about 1.00 PM on the occasion of Raksha Bandhan, while he and his family members were away to the house of his maternal uncle, thieves entered the house and stole Rs.2 lakhs in cash, Rs.1.25 lakhs of foreign currency (Dollar), 70 Tolas of gold jewellery and about 05 kgs of silver jewellery.

3. It is the case of the prosecution that the petitioner was arrested in FIR No.764 dated 23.08.2021 registered under Sections 456, 380, 420, 467, 468, 471 IPC and Sections 25/27 of Arms Act at Police

Station Cant. District Guna (M.P.), wherein, he made a disclosure statement stating therein that he was involved in the present occurrence.

4. The learned counsel for the petitioner submits that the petitioner was arrested on the basis of his disclosure statement recorded in another FIR. He has been in custody since 11.10.2021 and some recoveries have already been effected from him such as Rs.15,000/- in cash, a motorcycle and some jewellery. He further submits that in the other FIRs registered against him, he has been granted the concession of bail. He refers to **(i) order dated 11.01.2022 passed by the Additional Sessions Judge, Palwal in FIR No.310 dated 25.08.2021 registered under Sections 380, 454 IPC at Police Station Hodal, (ii) order dated 28.10.2021 passed by the First Additional Sessions Judge, Guna (M.P), in Crime No.199/19 registered under Sections 392, 397 IPC at Police Station Kotwali, Guna (M.P), (iii) order dated 21.10.2020 passed by the High Court of Gujarat at Ahmedabad in R/Criminal Misc. Application No.14626 of 2020 and (iv) order dated 22.03.2022 passed by the High Court of Madhya Pradesh in Crime No.764/2021 for the offences punishable under Sections 456, 380, 420, 467, 468, 471 IPC and Sections 25/27 Arms Act.** He thus contends that the petitioner deserves the concession of regular bail.

5. On the other hand, the learned State counsel submits that such kind of cases are on the rise and the petitioner is a habitual offender and thus, he does not deserve the concession of regular bail because even certain recoveries of stolen property has been effected from him. He,

however, does not dispute the factual position of the petitioner having been granted bail in the other cases registered against him.

6. I have heard the counsel of both the sides at length.

7. While dealing with the issue of grant of bail to an accused/convict with criminal antecedents, the Courts have held as under:-

In Maulana Mohd. Amir Rashadi Versus State of U.P. and another, 2012(1) R.C.R. (Criminal) 586, the Hon'ble Supreme Court held as under:-

“6.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.”

(Emphasis supplied)

In Rajender Singh Versus State of Haryana, CRM-40431-2021 in CRA-D-1640-DB-2014, decided on 19.01.2022, this Court 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.”

(Emphasis supplied)

8. In view of the judgments in Maulana Mohd. Amir Rashadi's case (supra) and Rajender Singh's case (supra) and keeping in view the fact that the petitioner has been in custody since 11.10.2021, the investigation is complete and in the other cases registered against him, he has been granted the concession of regular bail, the further incarceration of the petitioner is not required because as many as 12 witnesses are to be examined none of whom have been examined so far.

9. Thus, without adverting to the merits of the case lest it prejudices either side, I deem it appropriate to enlarge the petitioner on regular bail.

10. Accordingly, the present petition is allowed. The petitioner is ordered to be released on bail, subject to his furnishing adequate bail

bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

11. It is further directed that the petitioner shall appear on the first Monday of every month before the Police Station concerned and furnish an affidavit each time that he is not involved in any other case other than the cases mentioned in this order.

12. Nothing expressed hereinabove would be construed to be an expression of any opinion on the merits of the case.

(JASJIT SINGH BEDI)
JUDGE

12.05.2022
JITESH

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