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

CRM-M-14676-2022 (O&M)

Date of decision : 28.09.2022

Gurbaz @ Kala

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. R.S. Sidhu, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

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.427 dated 25.02.2020 registered under Sections 394, 397, 307, 120-B of the Indian Penal Code, 1860 (Sections 397, 307, 120-B of IPC have been added later on) and Section 25 of the Arms Act, 1959 at Police Station Ambala City, District Ambala.

Learned counsel for the petitioner has submitted that in the present case, the FIR has been registered on the complaint of Jarnail Singh to the effect that three young boys stopped his vehicle and snatched Rs.25,000/- from his pocket and had also caused injuries to him. It is further submitted that the said complainant has been examined as PW3 and in his examination, he had specifically stated that he had seen the accused persons, who were present in the Court, which included the present petitioner but the same were not the persons who had fired gun shot upon him and he had not identified the said persons as their faces were covered with clothes and has thus, been

declared to be hostile. It is contended that the petitioner is in custody since 26.07.2020 (2 years, 2 months and 2 days) and there are 27 prosecution witnesses, out of which, only 7 witnesses have been examined as yet and thus, the conclusion of trial is likely to take time. It is further contended that the complainant is now keeping good health and that earlier bail application of the petitioner was withdrawn on 08.03.2022 and even, thereafter, a sufficient period of time has elapsed but the trial has still not been concluded. Reference has been made to zimni order dated 16.03.2022 (Annexure P-5) to show thatailable warrants have been issued against PW SI Sanjay Kumar, on account of his non-appearance and also order dated 23.05.2022 (Annexure P-7) to show that in spite of the fact that PW6 SI Sanjay Kumar was bound down, he had not come present on the said date and on 23.08.2022, the Court time was over, thus, no witness had been examined.

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 also and is a habitual offender. It is further submitted that the petitioner along with co-accused had caused injuries to the complainant and had also snatched Rs.25,000/- from him.

Learned counsel for the petitioner, in rebuttal to the abovesaid argument, 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 learned counsel for the parties and has perused the paper book.

In the present case, the petitioner is in custody since 26.07.2020 (2 years, 2 months and 2 days) and investigation is complete and the challan has already been presented and out of 27 prosecution witnesses, only 7 witnesses have been examined as yet and thus, the conclusion of trial is likely to take time. The earlier bail application of the petitioner was dismissed as withdrawn on 08.03.2022 and even, thereafter, a substantial amount of time has elapsed but the trial has not been concluded. A perusal of zimni order dated 16.03.2022 (Annexure P-5) would show thatailable warrants had been issued against PW SI Sanjay Kumar as he was not present. Further, on 23.05.2022, said PW6 SI Sanjay Kumar was not present in spite of having been bound down and HC Ranjeet Singh and ESI Dalbir Singh also did not come present in spite of service. On 23.08.2022, although, PW-Ranjit Singh was present but his statement could not be recorded as the Court time was over and thus, the case was adjourned to 04.10.2022. The FIR has been registered on the complaint of Jarnail Singh who had stated that three young boys, at gun point, had snatched Rs.25,000/- from him. The said Jarnail Singh has been examined as PW3 and in his statement, he had specifically

stated that he does not identify the persons as their faces were covered with clothes and that he had seen the accused persons including the present petitioner, who were present in the Court, and they were not the persons who had fired upon him and accordingly, was declared to be hostile.

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, stand disposed of in view of the abovesaid judgment.

28.09.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No