

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(224)

CRM-M-17675-2022

Date of decision: - 17.10.2022

Amit @ Mitta

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Rajesh K. Dhankhar, Advocate
for the petitioner.

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

VIKAS BAHL, J. (ORAL)

This is a first petition under Section 439 Cr.P.C. for granting regular bail to the petitioner in FIR no.36 dated 07.06.2018 registered under Sections 302, 379-B, 148, 149 IPC and Section 25 of the Arms Act, 1959 at Police Station Naya Gaon, District SAS Nagar, Mohali.

Learned counsel for the petitioner has submitted that in the present case, the FIR was registered on the complaint of Pritam with respect to the death of his brother Saurav @ Mandy and as per the FIR, there were five persons named but the petitioner was not named in the FIR. It is further submitted that it is co-accused Aakash who had fired at the brother of the complainant and had caused the fire arm injuries. It is also submitted that there were some unknown persons also stated to be present at the spot in the FIR but no specific injury was attributed against

the said unknown persons. It is further submitted that the complainant Pritam had stated that he would be able to identify the said unknown persons in case they came before him. Reference has been made to evidence of PW-1 Pritam where he had stated that he could recognize accused Rishab @ Uddu, Arun @ Noni and Aakash present in the Court but was unable to identify the other accused including the present petitioner. It is submitted that the petitioner has been in custody since 12.02.2019 and there are 20 prosecution witnesses out of which, only one witness has been examined and the prosecution has moved an application under Section 319 Cr.P.C. and thus, the trial is not likely to be concluded in near future. It is further submitted that co-accused of the petitioner, namely, Sunil Kumar alias Shila has been granted the concession of regular bail, vide order dated 02.05.2022 in CRM-M-17075-2022 and the case of the petitioner is on a similar footing as that of said Sunil Kumar @ Shila.

Learned State counsel, on the other hand, has opposed the present petition and has submitted that the petitioner is one of the persons, who has been involved in the present petition on the basis of disclosure statement of Rishab @ Uddu, who is co-accused of the present petitioner. It is also submitted that the petitioner is involved in several other cases as well.

Learned counsel for the petitioner, in rebuttal, has submitted that the petitioner is on bail in the said 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 while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. 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 record.

A perusal of the FIR would show that five persons had been specifically named in the present case but the petitioner had not been named and the gun shot injuries had been attributed to co-accused Aakash. Although it has been stated that there were some unknown persons at the spot but no specific injury had been attributed to any of the unknown persons. It has been stated in the FIR by the complainant that he could recognize the unknown persons if they came before him. A perusal of the evidence PW-1 Pritam (handed over by learned counsel for the petitioner to this Court during the course of arguments) would show that he had identified the accused namely Rishab @ Uddu, Arun @ Noni and Aakash present in the Court but was unable to recognize other accused persons, including the present petitioner and Gagandeep. No injury has been attributed to the present petitioner, nor any overt act has been

attributed to him. The petitioner has been in custody since 12.02.2019 and there are 20 prosecution witnesses and out of them only one witness has been examined and the prosecution has moved an application under Section 319 Cr.P.C. and thus, the trial is likely to take time. Moreover, co-accused of the petitioner, namely, Sunil Kumar alias Shila has already been granted the concession of regular bail, vide order dated 02.05.2022 in CRM-M-17075-2022 and the case of the petitioner is on a similar footing as that of said Sunil Kumar @ Shila.

Keeping in view the above said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and 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 or influence 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 a final 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 petition.

October 17, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No