

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(209)

CRM-M-20076-2021 (O&M)
Date of decision: - 15.03.2022

Rakesh Varshney @ Rakesh Gupta

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Nitin Jain, Advocate,
for the petitioner.

Mr. Karan Sharma, DAG, Haryana.

Mr. Aditya Sanghi, Advocate
for the complainant.

VIKAS BAHL, J. (ORAL)

CRM-42180-2021

Present application has been filed under Section 482 Cr.P.C
for placing on record the copies of orders as Annexures P-4 and P-5.

Application is allowed, as prayed for. Copies of orders
(Annexures P-4 and P-5) are taken on record, subject to all just
exceptions.

CRM-M-20076-2021

Prayer in the present petition is for grant of regular bail to the
petitioner in FIR No.14 dated 16.02.2021, under Sections 418, 420, 467,

471 and 120-B of the Indian Penal Code, 1860 and Section 66-D of the Information Technology Act, 2000, registered at Police Station Cyber Crime, District Gurugram.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has not been named in the FIR and had never met the complainant. It is further submitted that as per the allegations in the FIR, it is one Kishan Kumar/Kishan Bhardwaj, who is stated to have fraudulently induced the complainant. It is further submitted that the petitioner has been involved in the present case only on the basis of disclosure statement of Kishan Kumar/Kishan Bhardwaj and that one Saurbh Palanwal @ Sumit Sharma @ Passu was also involved in the case, on the basis of disclosure statement of the said Kishan Kumar. It is submitted that said co-accused, namely, Saurbh Palanwal @ Sumit Sharma @ Passu has already been granted regular bail by a Co-ordinate Bench of this Court, vide order dated 10.11.2021 in CRM-M-30706-2021. It is also argued that the recovery has already been effected from the present petitioner and the challan has been presented and the petitioner has been in custody since 19.02.2021 and there are 26 witnesses, none of whom have been examined and thus, the trial is likely to take time, moreso, in view of the Covid-19 pandemic.

Learned State counsel as well as learned counsel for the complainant have opposed the present petition for regular bail and have submitted that in the present case, a fake e-mail address was prepared, which sent out fake e-mails and also a fake certificate had been prepared and thus, on the basis of the same, the complainant was duped an amount

of Rs.2,38,20,000/-. It is further submitted that an amount of Rs.44 lakhs and a gold bar/brick of 1 kg has been recovered from the present petitioner and the same, prima facie, shows that the petitioner is involved in the commission of the said offence. It is further submitted that out of an amount of Rs.2,38,20,000/-, an amount of Rs.52 lakhs has been transferred to the account of the petitioner. It is further submitted that the petitioner is involved in five other cases and thus, he does not deserve the concession of regular bail.

Learned counsel for the petitioner in rebuttal has submitted that in the present case, the recovery from all the three persons, which includes three gold bar/brick and cash i.e. almost Rs.2,00,00,000/-, has already been effected and even as per the impugned order, it has come out that the said amount has been released to the complainant. It is further submitted that without admitting liability, even in case the allegations qua the petitioner with respect of the deposit of Rs.52 lacs is taken to be true, then also, a recovery of Rs.44,00,000/- and one gold bar/brick of 1 kg has already been effected and the same has been released on supardari to the complainant. It is argued that the question as to whether the petitioner is involved in the present offence or not, would be a matter of trial and keeping in view the custody of the petitioner, he has prayed for the concession of regular bail to the petitioner.

Learned counsel for the petitioner further submitted that as per his instructions, the petitioner is on bail in all the five 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 learned counsel for the parties and has perused the paper-book.

It is not in dispute that the petitioner was not named in the FIR and as per the allegations, it is one Kishan Kumar/Kishan Bhardwaj, who is stated to have induced the complainant. The petitioner and one Saurbh Palanwal @ Sumit Sharma @ Passu were made the accused in the present case solely on the basis of disclosure statement of said Kishan Kumar. The co-accused of the petitioner i.e., Saurbh Palanwal @ Sumit Shama @ Passu, has already been granted the concession of regular bail by a Co-ordinate Bench of this Court vide order dated 10.11.2021 passed in CRM-M-30706-2021. Recovery has already been effected from the present petitioner and he has been in custody since 19.02.2021 and the challan in the present case has already been presented and there are 26 witnesses, none of whom have been examined, thus, the trial is likely to take time to conclude, moreso, in view of the present pandemic.

Keeping in view the abovesaid facts and circumstances and also in view of 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 bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court / Duty Magistrate / CJM, and subject to him not being required in any other case.

It is however made clear that in case, the petitioner influences or threatens any witness, then it would be open to the State to move an application for cancellation of bail of 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.

March 15, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes