

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**
(219)

CRM-M-23735-2020 (O&M)
Date of decision: - 16.11.2022

Emmanuel

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Rahul Bhargava, Advocate,
for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

Mr. Suresh Kumar Arya, Advocate,
for the complainant.

VIKAS BAHL, J. (ORAL)

This is the first petition under Section 439 Cr.P.C. to grant regular bail to the petitioner in FIR No.31 dated 14.03.2020, registered under Sections 420 and 120-B IPC, at Police Station Beas, District Amritsar.

Learned counsel for the petitioner has submitted that in the present case, a Co-ordinate Bench of this Court vide order dated 06.01.2022, was pleased to grant interim bail to the petitioner after taking into consideration the facts that the petitioner has been in custody for a period of more than one year and eight months and that out of 56

witnesses, 3 have been examined and thus, the trial is likely to take time. It is further submitted that the order of interim bail granted in favour of the petitioner is continuing till date. It is also submitted that the matter has been compromised between the petitioner and the complainant and the present dispute has civil tappings and the entire case is based on documents, thus, the interim bail granted in favour of the petitioner deserves to be confirmed.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that out of 56 prosecution witnesses, 6 have been examined and the petitioner is involved in two other cases.

Learned counsel for the complainant has submitted that the matter has been compromised between the present petitioner and complainant and the complainant has no objection in case the present petition is allowed and the petitioner is released on bail.

Learned counsel for the petitioner, in rebuttal, to the learned raised by learned State counsel, 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 gone through the paper-book.

On 06.01.2022, a Co-ordinate Bench of this Court was pleased to pass the following order: -

“Vide CRM-M-23735-2020 and CRM-M-23738-2020, the petitioners seeks the concession of 'regular bail' under the provisions of Section 439 Cr.P.C. Vide CRM-M-38292-2020, CRM-M-9389-2021 and CRM-M-9693-2021, the petitioners therein seek the concession of 'anticipatory bail' under the provisions of Section 438 Cr.P.C., upon FIR No.31, dated 14.03.2020, having been registered at Police Station Beas, District Amritsar, alleging therein the commission of offences punishable under the provisions of Sections 420/120-B of the IPC (with Sections 419/201 thereof added later).

On 16.12.2021, the following order had been passed by this court:-

***“CRM-M-23738 of 2020
CRM-M-23735 of 2020***

Though learned counsel for the petitioner wish to argue the matter on merits, however, they have also submitted that the petitioners in these petitions have been in custody for about 1 year and 8 months, with the trial still nowhere near conclusion.

Upon query to the learned State counsel, he submits that as per his instructions, only 3 prosecution witnesses out of 56 have been examined so far, but with the complainant, Sucha Singh, still to be examined and the next date of hearing before the trial court being 23.12.2021.

Adjourned to 06.01.2022, with it to be seen as to whether the complainant turns up to testify on 23.12.2021 or not, because if he does not, on that ground alone the petitioners in these petitions may be entitled to bail, simply on the ground of their long custody and the stage of the trial.

To be shown in the urgent motion list.

***CRM-M-38292 of 2021
CRM-M-9389-2021
CRM-M-9693-2021***

Adjourned to 06.01.2022.

Interim order to continue.

To be shown in the urgent motion list.

A copy of this order be placed on the file of the other connected matters too.”

Today, learned State counsel submits that, as per his instructions, though the complainant, Sucha Singh, did come to testify before the trial court on 23.12.2021, but even his examination-in-chief could not be conducted, as some more co-accused had been arrested and a report under Section 173(8) of the Cr.P.C. is to be submitted, after which, naturally, charges would be framed against them as per the wisdom of the trial court, and thereafter of course prosecution witnesses would start getting examined.

In view of the above, looking at the long period of custody of two of the petitioners in this case, i.e. Ashwani Sharma and Emmanuel (petitioners in CRM-23738-2020 and CRM-M-23735-2020 respectively), it is directed that they be released on interim bail to the complete satisfaction of the trial court, with the trial court to obtain bail and surety bonds sufficient to try and ensure that they do not abscond, also keeping in view the allegations against them, with the order being passed today to continue at this stage only till the next date of hearing before this court.

As regards the petitioners who are on interim bail under the provisions of Section 438 Cr.P.C., learned State counsel submits that, as per his instructions, Navpreet Singh alias Sunny, is now not joining investigation, possibly in view of the fact that there is another FIR also registered arraigning him as an accused therein.

Mr. Goraya, learned counsel for the said petitioner, however submits that as a matter of fact he has been admitted to bail in that case and he has been joining investigation and would continue to do so. Though I find that difficult to believe in view of the instructions of learned State counsel, yet it is directed that Navpreet Singh (the petitioner in CRM-M-9389-2021), will appear before the learned Ilaqa Magistrate on 10.01.2022, who would then summon the investigating officer to ensure that he is joined in the investigation, with a gazetted thereafter to file a status report as to whether he has co-operated in the investigation or not.

Adjourned to 28.04.2022.

Interim order to continue till then only and specifically.

A gazetted officer will also file an affidavit as to whether the

custodial interrogation of Amritpal Singh and Amanpreet Kaur (petitioners in CRM-M-9693-2021 and CRM-M-38292-2020 respectively), is required or not, and if so, the reasons thereof.

(A photocopy of this order be placed on the files of the connected cases).”

The above said interim order is continuing till date. It is not the case of the complainant or the learned State counsel that the petitioner has misused the concession of interim bail, rather, it is the joint case of the petitioner as well as the complainant that the matter has been compromised and the complainant has no objection in case the present petition is allowed and the interim bail granted in faovur of the petitioner is made absolute. The petitioner, as per his custody certificate, had already undergone 1 year, 6 months and 15 days of actual custody before he had been released on interim bail and out of total 56 prosecution witnesses, 6 have been examined, thus, the trial is likely to take time. The present case has civil tappings and the entire case is based on documents.

Keeping in view the above said facts and circumstances, the present petition is allowed and the interim bail granted to the petitioner by a Co-ordinate Bench of this Court, vide order dated 06.01.2022, is hereby made absolute.

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.

All pending application(s), if any, stand dispose of in view of the aforesaid order.

November 16, 2022
naresh.k

(VIKAS BAHL)
JUDGE

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