

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Date of decision: 01.09.2022

1.

CRM-M-29927-2022

Amit Khatri

.... Petitioner

Versus

State of Haryana

..... Respondent

2.

CRM-M-30381-2022

Amit Rathee

.... Petitioner

Versus

State of Haryana

..... Respondent

**CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Parveen Sharma, Advocate  
for the petitioners.

Mr. Munish Sharma, AAG, Haryana.

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**VIKAS BAHL, J. (ORAL)**

This order will dispose of two petitions. The first petition has been filed by petitioner-Amit Khatri i.e. CRM-M-29927-2022 which is third bail petition. and the second petition has been filed by petitioner-Amit Rathee, i.e. CRM-M-30381-2022 which is first bail petition.

Both the said petitions have been filed under Section 439

Cr.P.C. for the grant of regular bail to the petitioners in FIR No.749 dated 06.11.2020, registered under Sections 304 and 420 IPC and Section 72A-4-20 of the Excise Act (Sections 272, 304-A, 328, 467, 468 and 471 IPC and Section 61-4-20 of the Excise Act have been added later on), at Police Station City Sonipat, District Sonipat.

Learned counsel for both the petitioners has submitted that in the present case, the petitioners were not named in the FIR and have been in custody since 17.11.2020 and there are 56 prosecution witnesses, out of which, only six have been examined, thus, the trial is likely to take time. It is further submitted that the FIR in the present case was registered by Rajan on the allegation that his brother Raju had bought illicit liquor from an unknown person and thereafter upon consuming the same, his condition had deteriorated and he died on 06.11.2020. The supplementary statement of the complainant was then recorded in which it was stated that the illicit liquor had been sold to the deceased by co-accused Pawan @ Golu @ Behra and thus, Pawan @ Golu was arrested. It is further submitted that Pawan @ Golu @ Behra has made a disclosure statement on the basis of which both the present petitioners, as well co-accused Sahil Rahtee and Satpal @ Happu were implicated in the present case and were thereafter, arrested and no recovery of any illicit and illegal liquor has been effected from the present petitioners even after the said disclosure statements had been made. It is submitted that a disclosure statement made before the police is inadmissible in evidence. It is stated that the complainant has been examined as PW-1 and in his examination-in-chief, PW-1 has stated that his brother died due to stomach ache and

accused persons, including the present petitioners, had not committed any offence and accordingly, he was declared hostile. It is also submitted that co-accused Pawan @ Golu @ Behra, who was the person from whom, as per the supplementary statement of the complainant, the liquor consumed by the deceased was purchased, has already been granted the concession of regular bail by this Court vide order dated 23.03.2022 passed in CRM-M-1847-2022. It is also stated that the petitioner Amit Khatri had earlier filed two bail petitions, the first petition was withdrawn at that stage on 26.11.2021 and the second bail petition was withdrawn on 19.04.2022 with liberty to file a fresh petition after examination of the complainant and the Investigating Officer. It is submitted that thereafter the complainant has been examined on 30.05.2022 and has turned hostile and the Investigating officer of the present case has died and thus, the petitioner Amit Khatri is entitled to file the present petition for grant of bail.

Learned State counsel has opposed the present petition for the grant of regular bail and has submitted that both the petitioners are involved in other cases also and are habitual offenders.

Learned counsel for the petitioners, in rebuttal, has relied upon a judgment of the 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.

It is not in dispute that in the present FIR, which had been got registered by the complainant Rajan, both the petitioners were not named as accused. Both the petitioners are stated to be in custody since 17.11.2020 and there are 56 prosecution witnesses, out of whom, only six have been examined, thus, the trial is likely to take time to conclude. The petitioners in the present case have been implicated solely on the basis of the disclosure statement of the co-accused, even subsequent to which, no recovery of illicit or illegal liquor has been effected from either of the petitioners. The complainant has been examined as PW-1 and in his examination-in-chief, he has stated that his brother had died due to stomach ache and the accused persons including the present petitioners are not the persons who had committed the offence and thus, has not supported the case of the prosecution and had been declared hostile. The co-accused of the petitioners, namely, Pawan @ Golu @ Behra has already been granted the concession of regular bail by this Court vide order dated 23.03.2022 passed in CRM-M-1847-2022 and the case of the petitioners, if not on a better footing, is atleast on a similar footing as that of the said Pawan @ Golu @ Behra. Petitioner Amit Khatri has filed the

present third bail petition and in his second bail petition, the following order was passed on 19.04.2022:-

*“This is a second bail application under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.749 dated 06.11.2020, registered under Sections 304 and 420 IPC and Section 72-A of the Punjab Excise Act, 1914 (Haryana Amendment Bill, 2020), at Police Station Sonipat City, District Sonipat.*

*Learned counsel for the State has pointed out that in the present case the Investigating Officer and the complainant are the material witnesses and they have not been examined as yet.*

*Learned counsel for the petitioner, in view of the above, seeks to withdraw the present petition, at this stage, with liberty to file fresh petition after the Investigating Officer and the complainant are examined. He has also submitted that since the petitioner has been in custody since 14.11.2020, thus, the direction be given to the trial Court to examine the Investigating Officer and the complainant at the first instance as expeditiously as possible.*

*In view of the statement given by learned counsel for the petitioner, the present petition is dismissed as withdrawn, at this stage, with liberty to file a fresh petition after the Investigating Officer and the complainant are examined.*

*The State is directed to produce the Investigating Officer and the complainant as expeditiously as possible and get the said witnesses examined first. The trial Court is also requested to examine the Investigating Officer and the complainant as expeditiously as possible.”*

After passing of the said order, the complainant has been examined on 30.05.2022 and he has not supported the case of the prosecution and the Investigating Officer has died, thus, entitling the petitioner Amit Khtari to file the present third bail petition.

Keeping in view the above-said facts and circumstances and the law laid down in **Maulana's case (supra)**, the present petitions are allowed and the petitioners are ordered to be released on bail on their furnishing bail / surety bonds to the satisfaction of the concerned trial

Court/ Duty Magistrate and subject to them not being required in any other case.

However, 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 cases which are only for the purpose of adjudicating the present bail petitions.

It is made clear that in case, any act is done by the petitioners 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 petitioners.

**(VIKAS BAHL)**  
**JUDGE**

**September 01, 2022.**

*Davinder Kumar*

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