

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

CRM-M-31847-2022

Date of Decision: 28th July, 2022

Nishant Rai

... Petitioner

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. S.S. Aviraj, Advocate for the petitioner.
Mr. Sandeep Kumar, DAG, Punjab.

AVNEESH JHINGAN , J.(Oral)

1. This petition under Section 439 Cr.P.C. is filed seeking regular bail in FIR No. 132, dated 24th April, 2020, under Sections 394 (Section 323, 324, 450, 120-B and 34 Indian Penal Code, 1860 added later on), registered at Police Station City Hoshiarpur, District Hoshiarpur.
2. Learned counsel for the petitioner claims parity with co-accused Nitish Rai who was granted regular bail by this court on 13th July, 2022.
3. On 13th July, 2022, this Court passed the following order:

“This petition under Section 439 Cr.P.C. is filed seeking regular bail in FIR No. 132 dated 24.4.2020, under Section 394 IPC, registered at Police Station City District Hoshiarpur.

Learned counsel for the petitioner claims parity with co-accused who was granted regular bail by this court on 14.8.2020.

On 14.8.2020, this court passed the following order:

“Petitioner has approached this Court for grant of regular bail in FIR No.132 dated 24.04.2020 registered under Section 394 IPC (Section 120-B added later on) at Police Station City Hoshiarpur, District Hoshiarpur.

It is the contention of learned counsel for the petitioner that the petitioner has been roped in only on the basis of the alleged statement of the co-accused and the disclosure

statement i.e. Shri Nitish Rai, who was arrested on 05.05.2020. Allegation is also there that the activa scooter, which is alleged to have been used in the commission of the offence by the two other persons, who were arrested, belongs to the petitioner. Petitioner is not at all involved in the commission of the offence, what has been asserted is that the petitioner is the conspirator and he has hatched the conspiracy to rob the complainant. This has been said so on the basis of the belief of the complainant that the petitioner is a drug addict. Nothing direct has come with regard to the involvement of the petitioner. Petitioner was arrested on 02.06.2020 and since the challan has been presented, no useful purpose would be served by keeping the petitioner in custody and, therefore, he be granted the concession of bail.

Learned counsel for the State has submitted that at the time of presentation of challan, Section 450 IPC has been added. He, however, could not dispute on the basis of the FIR and the statement of the co-accused that the petitioner could not be involved in the said offence, which has been added as only two persons had entered the premises of the complainant, both of them have been arrested i.e. Nitish Rai and Karanvir @ Kanni. His further assertion is that in case the petitioner is released at this stage, he would influence the witnesses.

Learned counsel for the complainant has vehemently argued that the complainant has suffered six injuries as is apparent from the MLR. Robbery has been committed and more than Rs. 50,000/- has been taken away by the accused from the kutiya of the complainant, who is a swami. His contention is that a pious person has been unnecessarily roped in and thereafter given various injuries, which have been found on the head and face of the complainant as per the medico-legal report. Petitioner, therefore, cannot be granted the concession of bail.

I have considered the submissions made by the counsel for the parties and having gone through the FIR as well as the submissions of the counsel, it is apparent that the name of the petitioner figures only on the statement of the co-accused. The allegations with regard to the trespass is apparently prima facie not established against the petitioner as only two persons had entered the premises of the complainant, who have been specifically named as Nitish Rai and Karanvir @ Kanni. Petitioner figures only to the extent of having hatched he conspiracy. No recovery has been effected from the petitioner. Keeping in view the facts and circumstances of the present case, especially the role, which has been attributed to the petitioner, this Court does not find any reason for continuing the petitioner in custody any longer, especially when the challan stands presented. The present petition is allowed.

Petitioner is granted bail in FIR No.132 dated 24.04.2020 registered under Section 394 IPC (Section 120-B added later) and further Section 450 IPC as added at the time of presentation of challan, at Police Station City Hoshiarpur,

District Hoshiarpur. He is ordered to be released on bail to the satisfaction of the trial Court/ Chief Judicial Magistrate/Duty Magistrate, Hoshiarpur.

Any observations made hereinabove are for the purpose of disposal of the present petitions alone and shall have no bearing on the merit of the case during the trial in any manner.”

Learned counsel for the State though opposes the prayer for grant of bail, he is not able to distinguish the parity of the petitioner with the co-accused so far as grant of bail is concerned.

Without commenting on the merits of the case on the basis of parity of the petitioner with the co-accused so far as grant of bail is concerned, the petitioner is granted bail subject to his furnishing bail bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

The petition is allowed.

It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.”

3. Learned counsel for the State on instructions from SI Subhash is not in a position to distinguish the parity but opposes the bail, submits that petitioner is involved in another case in which he is on bail.
4. Without commenting on the merits of the case, on the basis of parity of petition vis-a-vis co-accused so far as grant of bail is concerned and considering that the conclusion of investigation and trial is likely to take time, the petitioner is granted bail subject to his furnishing bail bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.
5. The petition is allowed.
6. However, it is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

(AVNEESH JHINGAN)
JUDGE

28th July, 2022
Parveen Sharma