

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(226)

CRM-M-31747-2022

Date of decision: - 05.09.2022

Jagpal

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Anshumaan Dalal, Advocate,
for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

Mr. Mohit Rathee, Advocate
for the complainant.

VIKAS BAHL, J. (ORAL)

This is the first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.250 dated 30.06.2021, under Sections 302, 212, 120-B and 34 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, registered at Police Station Baroda, District Sonipat.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has been falsely implicated and there is no legally admissible evidence against the present petitioner to connect him with the alleged crime. It is submitted that the petitioner is not named in the FIR and as per the FIR, co-accused Jaidev along with one unknown person had gone on a motorcycle and had shot with his pistol at the

deceased Parvinder, who was brother of the complainant Parveen and fled. Even in the supplementary statement of the complainant, recorded on 29.08.2021, the petitioner was not named as an accused. It is further submitted that as per the case of the prosecution, the person who had gone along with co-accused Jaidev was Sushil @ Mithu. It is argued that it is not the case of the prosecution that the petitioner was also present at the place of the alleged occurrence and the petitioner is sought to be implicated solely on the basis of the disclosure statement of co-accused Jaidev and even in the said disclosure statement, no specific overt act or role has been attributed to the present petitioner and the only allegation against the present petitioner is that Jaidev, Anil, Sushil @ Mithu and the present petitioner had hatched a conspiracy to murder Pavinder while sitting in the house of said Jaidev. It is submitted that apart from the said disclosure statement, there is no material to even remotely connect the present petitioner with the alleged crime. It is further submitted that the said disclosure statement of Jaidev has been signed by three witnesses i.e. Head Constable Anoop Singh, Head Constable Pradeep and Mandeep son of Ramesh and a perusal of the statements of each of the said three witnesses, which have been annexed as Annexures P-4, P-5 and P-6, respectively, would show that they have not named the present petitioner and although, the details with respect to the disclosure statement suffered by co-accused Jaidev have been given in the said statements, but even while recording the same, name of the present petitioner has not been mentioned therein, whereas, the names of Jaidev, Anil and Sushil @ Mithu, as having been a part of the conspiracy, have been specifically

mentioned. It is further submitted that the petitioner has been in custody since 17.02.2022 and there are 21 prosecution witnesses, none of whom have been examined, thus, the trial is likely to take time.

Learned State counsel on the other hand has opposed the present petition for regular bail and has submitted that the present petitioner was also part of the conspiracy and the said fact is apparent from the disclosure statement of co-accused Jaidev, who is brother of the present petitioner. It is submitted that said Jaidev and the present petitioner are residing in the same house and that the present petitioner is involved in seven other cases and is a habitual offender.

Learned counsel for the petitioner in rebuttal has submitted that out of the said seven cases, the petitioner has been acquitted in three cases and in other four cases he is on bail 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 gone through the paper-book.

The petitioner has been in custody since 17.02.2022 and there are 21 prosecution witnesses, none of whom have been examined, thus, the trial is likely to take time. The petitioner was not named in the FIR. As per the FIR, one Jaidev and another unknown person had gone and had shot the brother of the complainant. The said Jaidev was accompanied by another unknown person, who as per the case of the prosecution was Sushil @ Mithu. The incident occurred on 30.06.2021 and the FIR had also been got registered on 30.06.2021 and thereafter, the supplementary statement of Parveen (complainant) was recorded on 29.08.2021 (Annexure P-2) and even in the said statement, the petitioner was not named as an accused. The petitioner has been implicated in the present case after a period of more than six months from the date of the alleged occurrence, on the basis of the disclosure statement of said Jaidev dated 25.01.2022 (P-3). Even as per the said disclosure statement, no overt act has been attributed to the present petitioner, nor it has been stated that the petitioner was present at the spot, but it has been stated that Jaidev, Anil, Sushil @ Mithu and the present petitioner had hatched a conspiracy to murder Parvinder while sitting in the home of said Jaidev. No recovery has been effected from the present petitioner even subsequent to his arrest. The said disclosure statement of Jaidev has been stated to have been signed by three witnesses i.e. Head Constable Anoop Singh, Head Constable Pradeep and Mandeep son of Ramesh and a perusal of the statements of each three of the said witnesses, which have

been annexed as Annexures P-4, P-5 and P-6, respectively, would show that they had not named the present petitioner, although, they had given the details with respect to the recording of the disclosure statement of Jaidev and although, it had been stated therein that Jaidev, Anil and Sushil @ Mithu had hatched a conspiracy, but the name of the present petitioner had not been mentioned even with respect to the alleged conspiracy.

Keeping in view the above said facts and circumstances as well as in view of the law 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 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.

September 05, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No