

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

CRM-M-31700-2022

Date of Decision:15.11.2022

Pawan alias Musa

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present : Mr. Raman Chawla, Advocate
for the petitioner.

Mr. Praveen Bhadu, A.A.G. Haryana.

VIKAS BAHL, J. (Oral)

This is the first petition under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in FIR No.35 dated 06.02.2022 registered under Sections 25 (1B) (A) of Arms Act at Police Station Urban Estate, Hisar, District Hisar.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 06.02.2022 and the investigation in the case is complete and challan has been presented and there are 9 prosecution witnesses, out of which, none have been examined and, thus, the conclusion of the trial is likely to take time. It is further submitted that in the present case, no injury or overt act has been attributed to the petitioner and the alleged weapon used in the commission of offence i.e, pistol .32, bore has already been recovered by the police and thus, no purpose would be served by keeping the petitioner in further incarceration. It is also submitted that all the prosecution witnesses are official witnesses and thus, the question of influencing them does not arise.

On the other hand, learned State counsel has opposed the present petition for regular bail and has submitted that the alleged weapon

i.e. pistol .32 bore recovered was an illegal weapon as the petitioner does not have any licence for the same. It is further submitted that petitioner is an accused in several other cases making him a habitual offender and thus, does not deserve the concession of regular bail.

Learned counsel for the petitioner, in rebuttal to the said argument, has relied upon the judgment of Hon'ble Supreme Court in **Maulana Mohd. Amir Rashadi v. 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 the learned counsel for the parties and has perused the paper book.

In the present case, the petitioner is in custody since 06.02.2022 and investigation in the case is complete and the challan has been presented and there are 9 prosecution witnesses, out of which, none have been examined and, thus, the conclusion of the trial is likely to take time. No overt act or injury has been attributed to the petitioner and recovery of the alleged weapon i.e. pistol .32 bore has already been effected. Hence, no purpose would be served by keeping the petitioner in further incarceration.

Keeping in view the abovesaid facts and circumstances as well

as law laid in *Maulana Mohd. Amir Rashadi's* case (supra), the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to him not being required in any other case.

However, it is made clear that in case, any act is done by the petitionere to threaten 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 an 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 application.

(VIKAS BAHL)
JUDGE

15.11.2022
rajeev

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