

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

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CRM-M-38514-2021

Date of decision : 08.09.2022

Maniual @ Mema

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. SPS Sidhu, Advocate for the petitioner.

Mr. Ramdeep Partap Singh, Sr. DAG, Punjab.

Mr. Vikram Satpal Anand, Advocate,
for the complainant.

VIKAS BAHL, J. (ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.115 dated 07.10.2018 registered under Sections 302, 307, 341, 427, 148, 149, 120-B IPC and Sections 25 & 27 of the Arms Act, at Police Station Cantt. Ferozepur, District Ferozepur.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 05.11.2018 (03 years, 10 months and 03 days) and there are 36 witnesses, out of which, only 9 have been examined and thus, the trial is likely to take time. It is further submitted that although, the present petitioner has been arrayed as an accused in a case of double murder, but as per the prosecution's case, the petitioner is neither named in the FIR nor is stated to be at the spot when the occurrence had taken place nor he has been attributed any injury. It is submitted that the occurrence

had taken place on 06.10.2018 and FIR has been registered on 07.10.2018 and thereafter, since the petitioner, who was not even involved in the present incident was repeatedly being called to police station, thus, the petitioner along with other persons, filed petition for grant of anticipatory bail in the Court of the Additional Sessions Judge, Ferozepur, who, vide order dated 31.10.2018, dismissed the said application as having been rendered infructuous on the statement made by ASI Balbir Singh to the effect that the petitioner and other persons were not the accused persons in the FIR and were not required for investigation. Further direction was given to police authorities to issue a two days' prior notice in case, they chose to arrest the petitioner. It is contended that immediately thereafter, on 01.11.2018, the statement of one Montu Gill was recorded, who had stated that one of his known persons had disclosed to him that the present petitioner and other persons were doing recce (reconnaissance) of the whereabouts of the deceased and had informed the main accused about the presence of the said deceased persons. It is submitted that the said Montu Gill has been examined as PW-3 and in his cross-examination, he has stated that it was one Arjun, who had informed him regarding the same. It is argued that the statement of Arjun has not been recorded nor he was produced as a witness in the present case. It is submitted that other than the said statement of Montu Gill, there is no other evidence against the petitioner and no recovery has been effected from him.

Learned counsel for the complainant and learned State counsel on the other hand, have opposed the present petition for regular bail and have submitted that the present case is a case in which two persons have lost

their lives and have submitted that as per the statement of Montu Gill, it was the petitioner and other persons, who were informing the main accused about the whereabouts of the deceased, which helped the main accused to arrive at the place of occurrence and seriously injure the two persons namely, Harjinder Singh and Sonu, which resulted their death. It is submitted that the petitioner is involved in one more case under the Prisons Act although, other facts have not been disputed.

Learned counsel for the petitioner in rebuttal 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 perused the paper book.

In the present case, the petitioner is in custody since 05.11.2018 (03years, 10 months and 03 days) and there are 36 witnesses, out of which, only 9 have been examined, thus, the trial is likely to take time. The petitioner is not named in the FIR nor is stated to have inflicted any injury

on any person nor is stated to be armed with any weapon. The incident in the present case occurred on 06.10.2018 and the FIR was registered on 07.10.2018 and a perusal of the order dated 31.10.2018 (Annexure P-3) would show that in the anticipatory bail application filed by the petitioner along with other persons, ASI Balbir Singh had made a statement that the petitioner and other persons had not been arrayed as accused persons in the FIR and were not required for investigation and accordingly, the said application was dismissed as having been rendered infructuous with a direction given to the police authorities to issue a two days' notice before arresting the petitioner. It is the case of the prosecution that the statement of one Montu Gill was recorded, who in his statement stated that the petitioner and other persons were doing recce and were informing the main accused about the whereabouts of the deceased persons. The said Montu Gill has been examined as PW-3, who deposed that he had been disclosed about the above-said fact regarding the recce done, by Arjun son of Channa. It is not in dispute that no statement of Arjun has been recorded under Section 161 Cr.P.C. nor he is a witness in the present case. The question whether the petitioner could be convicted on the basis of statement of Montu Gill (PW-3) or not, would be a moot question and would be decided during the course of trial.

Keeping in view the above said facts and circumstances and in view of the law laid down in ***Maulana's*** case (supra), the present petition is allowed and the petitioner is 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.

08.09.2022
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(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No