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

CRM-M-35877-2022

Date of decision : 20.09.2022

Azad Alam

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Atul Goyal, Advocate for the petitioner.

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

VIKAS BAHL, J. (ORAL)

This is the second petition filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in FIR No.210 dated 03.11.2020 registered under Section 302 of the Indian Penal Code, 1860 (Sections 120-B and 201 of IPC have been added later on) at Police Station Jodhewal, District Police Commissionerate Ludhiana.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 24.12.2020 and there are 23 prosecution witnesses, out of which, only three witnesses have been examined as yet and, thus, the conclusion of trial is likely to take time. It is further submitted that on 07.02.2022, the petitioner had withdrawn the earlier bail application at that stage after seeking liberty to file a fresh petition

after examination of Dilbagh Singh and Jaswinder Singh and that the said Dilbagh Singh and Jaswinder Singh have now been examined and, therefore, the petitioner is filing the present second petition in accordance with liberty which had been granted by this Court vide order dated 07.02.2022. It is contended that in the present case, FIR was registered against an unknown person on 03.11.2020 and the petitioner was sought to be implicated on 22.12.2020, on the basis of statement made by one Dalbara Singh @ Dilbagh Singh who had stated that he was a labourer and on 04.11.2020, was having drinks while sitting in a tavern situated at Deep Vihar Colony, Bahadur Ke Road and there, two young boys were sitting and one of the boys, whose name was Ashok, had called the other boy by name, whose name was Azad (petitioner) and had stated that by killing Raju Bosak, who is the brother of said Ashok, he had removed the obstacle between him and his *Bhabhi* namely Anita Devi. It is further contended that in addition to the statement of the said Dalbara Singh, the statement of Jaswinder Singh was also recorded on 24.12.2020 to the effect that the present petitioner and other co-accused had come to him on 05.11.2020 and had confessed the crime. It is argued that the said Jaswinder Singh has been examined as PW1 and he has not supported the case of the prosecution. It is further argued that even a perusal of evidence of PW2-Dalbara Singh @ Dilbagh Singh would show that in his examination-in-chief, he had not named the present petitioner and was also partly declared as hostile and it is on the asking of the Court, that he had given the name of the accused persons who were present. It is also

submitted that it is the present petitioner who was stated to be wearing black T-shirt and was a person to whom Ashok Kumar had stated that obstacle in the way of your (i.e. the present petitioner) *bhabhi* has been removed. It is also contended that the said evidence of PW2 is in contradiction to the statement recorded on 22.12.2020 (page 22 of the paper book) inasmuch as Anita Devi was not in any way related to the present petitioner nor had any relationship with the present petitioner even as per the case of the prosecution and it was the said Ashok Kumar who had an illicit relationship with the said Anita Devi. It is also argued that the petitioner had not been involved in any other FIR prior to registration of the present FIR and there is no eye-witness in the present case and the entire case is based on circumstantial evidence.

On the other hand, learned State Counsel has opposed the present petition for grant of regular bail to the petitioner and has submitted that the petitioner has been implicated on the basis of statement of Dalbara Singh @ Dilbagh Singh which was recorded on 22.12.2020 and on the statement of Jaswinder Singh which was recorded on 24.12.2020. It is further submitted that after the registration of the present FIR, the petitioner was involved in one case under the Prison Act.

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 24.12.2020 and the challan has also been presented and out of 23 prosecution witnesses, only three witnesses have been examined as yet

and, thus, the conclusion of trial is likely to take time. The FIR had been registered against unknown person. There is no eye-witness in the present case. On 22.12.2020, the statement of Dalbara Singh @ Dilbagh Singh was recorded who had implicated the present petitioner and one Ashok Kumar, on the basis of what he had heard while sitting in a tavern. On 24.12.2020, the statement of Jaswinder Singh was recorded to the effect that on 05.11.2020, the present petitioner and other co-accused person made an extra judicial confession before him. The said Jaswinder Singh has been examined as PW1 and he has not supported the case of the prosecution and has rather stated that he never made any statement before the Police in connection with the present case. Even PW2-Dalbara Singh @ Dilbagh Singh was declared as partly hostile. It would be a moot point during the course of trial as to whether the petitioner could be convicted on the basis of said evidence of PW1 and PW2 and the other evidence to be led by the prosecution or not. The petitioner was not involved in any other case till the registration of the present FIR and subsequent to the registration of the present FIR, he is stated to be involved in one case under the Prison Act. The earlier bail application filed by the petitioner was withdrawn at that stage vide order dated 07.02.2022 with liberty to file a fresh petition after examination of Dilbagh Singh and Jaswinder Singh. The said two witnesses have now been examined thus, entitling the petitioner to institute the present second petition for regular bail.

Keeping in view the abovesaid facts and circumstances, 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 petitioner 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.

20.09.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**