

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

CRM-M-40461-2022 (O&M)

Date of Decision: 09.09.2022

Sukhwinder Singh @ Sukha @ Sukhdev Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Narinder S. Lucky, Advocate,
for the petitioner.

Mr. Ramdeep Partap Singh, Sr. D.A.G., Punjab.

VIKAS BAHL, J. (Oral)

1. This is the 2nd petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No. 04, dated 23.01.2021, under Sections 420/218/120-B of the Indian Penal Code, 1860, (with Sections 465/467/468/471 of the IPC were added later) registered at Police Station Sadiq, District Faridkot.

2. Learned counsel for the petitioner has submitted that in effect the present 2nd regular bail petition is the first bail petition as the first petition was withdrawn on 28.07.2022 with liberty to file a fresh one after giving full and better particulars and also after annexing the sale deeds vide which wife of the petitioner had sold the land to one Resham Singh. It is submitted that the present petition has been filed after complying with the observations made in the order dated 28.07.2022. It is submitted that the petitioner is in custody since 05.05.2022 and the investigation is

complete and the '*challan*' has been presented and there are 24 witnesses, none of whom have been examined and thus, the trial is likely to take time. It is further submitted that the case is triable by the Magistrate and the entire case is based on documents thus, no purpose would be served by keeping the petitioner in further incarceration. It is argued that at the time of sale deed dated 17.04.2018, in which the property in question was sold by the wife of the petitioner Binder Kaur to one Resham Singh, it had been agreed between the parties that the loan from the Bank had to be paid by Resham Singh and that in case, the said loan was not cleared, then a legal notice dated 12.07.2019 was given by the wife of the present petitioner Binder Kaur to sub-Registrar to cancel the sale deed. It is submitted that even a complaint dated 21.08.2019 was filed under Sections 420/467/468/120-B of the IPC before the Court of Judicial Magistrate Ist Class, Barnala, and even a civil suit was filed on 31.07.2020 with a prayer for restraining the defendants thereon from further sale of the property. It is submitted that it is subsequent to the same, that the present FIR has been registered.

3. Learned State counsel, on the other hand, has opposed the present petition and has submitted that the petitioner is involved in one more case and has further stated that it was the wife of the present petitioner and the present petitioner who were the main beneficiaries on account of the fact that entry with respect to the loan was not entered in the Jamabandi.

4. Learned counsel for the petitioner in rebuttal has submitted that the wife of the petitioner, who is the vender, has been granted regular

bail by the Additional Sessions Judge, Faridkot, vide order dated 13.01.2022. Learned counsel for the petitioner further has submitted that as per settled law, it is the facts of the present case which are required to be considered for the purpose of deciding the present bail application. For the said proposition, learned counsel for the petitioner has relied upon judgment passed by the Hon'ble Supreme Court titled as **Maulana Mohd. Amir Rashadi Vs. State of U.P. and others** reported as 2012 (2) SCC 382 and reference has been made to the relevant portion of paragraph 6 which 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.

The petitioner is in custody since 05.05.2022 and the investigation is complete and the '*challan*' has been presented and there are 24 witnesses, none of whom have been examined and thus, the trial is likely to take time. The case is triable by a Magistrate and is based upon documentary evidence. The wife of the petitioner, who is the alleged seller as per the sale deed dated 17.04.2018, has been granted the concession of regular bail by the Additional Sessions Judge, Faridkot, vide order dated 13.01.2022. A prior complaint and a civil suit have been instituted by the petitioner before the registration of the FIR.

Keeping in view the above said facts and circumstances, 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 and also subject to the petitioner giving an undertaking to the trial Court that he would appear before the trial Court on each and every date unless his appearance is personally exempted by the Court.

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.

Pending miscellaneous application, if any, stands disposed of in view of the abovesaid order.

September 09, 2022
nitin

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No