

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-40723-2022

Date of decision : 22.09.2022

Shokeen

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Shilak Ram Hooda, Advocate
for the petitioner.

Mr.Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is a petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.418 dated 19.09.2020 registered under Sections 379A, 392, 397, 506 IPC and Sections 25/ 54/ 59 of the Arms Act at Police Station Kharkhoda, District Sonapat.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 24.09.2020 and the investigation is complete and the challan has been presented and there are total 23 prosecution witnesses, out of whom, 7 witnesses are yet to be examined and thus, the trial is likely to take time. It is further submitted that the petitioner is not named in the FIR and has been nominated on the basis of the disclosure statement of co-accused. It is also submitted that no recovery has been effected from the present petitioner and the car make Tata Safari in question has already been recovered from co-accused. It is argued that as

the spot when their car, mobile phone and cash was snatched. It is further argued that the said Kabir and Kamal have been examined as PW-2 and PW-3 respectively, and both the said witnesses have not supported the case of the prosecution and have been declared hostile and they had specifically stated in their cross-examination that the accused persons, including the present petitioner, were not the persons, who had committed the alleged offence.

Learned State counsel on the other hand has opposed the present petition for regular bail and has submitted that the petitioner is involved in one more case of similar nature. It is further submitted that in addition to disclosure statement of the co-accused, there is also a confessional statement of the present petitioner suffered in another FIR No.280/2020.

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.

The petitioner has been in custody since 24.09.2020 and the investigation is complete and there are total 23 prosecution witnesses, out of whom, 7 witnesses are yet to be examined and thus, the trial is likely to take time. It is further submitted that the petitioner is not named in the FIR and no recovery has been effected from him. The petitioner was implicated on the basis of disclosure statement and his own disclosure statement which was recorded in another FIR, however, no recovery has been made from him even subsequent to the same. The complainant in the FIR is Kabir and the person who was sitting with Kabir in the car was one Kamal when the alleged incident had taken place and both the said Kabir and Kamal have been examined PW-2 and PW-3 and they have not supported the case of the prosecution and have been declared hostile and in their cross-examination, they have specifically stated that accused persons including the present petitioner are not the persons who had committed the alleged crime.

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.

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.

(VIKAS BAHL)
JUDGE

September 22, 2022
Davinder Kumar

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