

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

CRM-M-41012 of 2022 (O&M)

DECIDED ON: 29th September, 2022

Amit Rathi

.....PETITIONER

VERSUS

State of Haryana

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Parveen Sharma, Advocate for petitioner.

Mr. Gurmeet Singh, AAG Haryana.

AVNEESH JHINGAN, J (ORAL)

This is second petition for grant of regular bail in case of FIR No. 760 dated 11.11.2020, under Sections 272, 304, 328, 420 of Indian Penal Code, 1860 and Section 72-A of the Punjab Excise Act, 1914 (Haryana Amendment Bill, 2020 and subsequently added Sections 467, 468, 471, 120-B IPC, 1860 registered at Police Station City Sonipat, District Sonipat (Haryana).

Learned counsel for the petitioner claims parity with co-accused Anil Malik, who was granted regular bail on 11.7.2022.

On 11.7.2022, this Court passed the following order:

" The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No. 760 dated 11.11.2020 under Sections 120-B, 272, 304, 420, 467, 471, 328, 272 of the Indian Penal Code, 1860 and Sections 72-A and 61 of the Punjab Excise Act, 1914 (Haryana Amendment Bill, 2020) registered at Police Station City Sonipat, District Sonipat.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 31.10.2021, challan has already been presented and there are as many as 14 prosecution witnesses out of whom only one has been examined, thus, the trial is likely to take time. It is further submitted that the petitioner was not named in the FIR and the FIR has been got registered by one Rajjo wife of Mahender, who is stated to have consumed spurious liquor and died. It is contended that in the FIR, it has been specifically mentioned that the

deceased Mahender had told the complainant that on 31.10.2020, he had purchased country made liquor Rasila from one Ronak son of Bijender. It is further contended that the petitioner is sought to be implicated on the basis of the statement of the son of the complainant as per whom the present petitioner alongwith other persons was responsible for selling spurious liquor. It is argued that even after recording of the said statement, no recovery has been effected from the present petitioner to link him with the alleged crime.

Learned State counsel, on the other hand, has opposed the present application for regular bail and has submitted that the petitioner is involved in several other cases and is, thus, a habitual offender and thus, has prayed that the present petition be dismissed.

Learned counsel for the petitioner has rebutted the said argument and 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 dated 16.01.2012 passed by the Hon'ble Supreme Court in ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and others reported 2012 (2) SCC 382*** 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 paperbook.

The petitioner has been in custody since 31.10.2021, the challan has already been presented and there are as many as 14 prosecution witnesses, out of whom only one has been examined and thus, the trial is likely to take time. A perusal of the FIR would show that it has been stated by the complainant Rajjo that her husband had died after consuming spurious liquor and her husband had informed her that on 31.10.2020, he had purchased country made liquor Rasila from one Ronak son of Bijender and the present petitioner was not named in the FIR. Even after the petitioner had been implicated on the basis of the statement of the son of the complainant, no recovery has been effected from the petitioner. The question as to whether the

petitioner is also involved in the present incident or not, would be finally adjudicated during the course of the trial.

Keeping in view the abovesaid facts and circumstances and also in view of the law laid down in Maulana's (*supra*) case, 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, 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 application.

It is made clear, in case, the petitioner threatens or influences any witness, it would be open to the State to move an application for cancellation of the present regular bail granted to the petitioner."

Learned State counsel on instructions from ASI Chand opposes the prayer for bail but on instruction is not able to distinguish parity of petitioner viz-a-viz co-accused so far as grant of bail is concerned.

Without commenting upon the merits of the case and on the basis of parity of petitioner with co-accused, bail is granted to the petitioner on furnishing surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned.

The petition is allowed.

It is clarified that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

Since the main case has been decided, the pending application, if any is rendered infructuous.

(AVNEESH JHINGAN)
JUDGE

29th September, 2022

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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>