

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

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**CRM-M-41283-2022
Decided on : 29.09.2022**

Pawan Kumar @ Mottu

. . . Petitioner(s)

Versus

State of Punjab

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Kamal Narula, Advocate
for the petitioner(s).

Mr. J.S.Arora, DAG, Punjab
assisted by ASI Kulwant Singh.

SANJAY VASHISTH, J. (Oral)

The instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to the petitioner – Pawan Kumar @ Mottu, who has been booked for having committed the offence punishable under Section 379-B of IPC (Section 411 of IPC added later on), in FIR No. 69, dated 19.05.2022, registered at Police Station City Fazilka, District Fazilka, during the pendency of trial.

At the outset, learned State counsel has filed the custody certificate dated 28.09.2022 in Court today. Same is taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

A copy thereof has been handed over to the counsel for the petitioner.

Learned counsel for the petitioner refers to the order dated 31.08.2022, passed in CRM-M-38129-2022 (Babbu Vs. State of Punjab) (Annexure P-3), vide which, co-accused Babbu was granted the concession of bail by this Court. Order dated 31.08.2022 says as under:-

“The instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to the petitioner – Babbu, who has been booked for having committed the offence punishable under Section 379-B of IPC (Section 411 of IPC added later on), in FIR No. 69, dated 19.05.2022, registered at Police Station City Fazilka, District Fazilka, during the pendency of trial.

Learned counsel for the petitioner submits that on the basis of secret information raid was conducted and one mobile make Redmi Note 8 and one Vivo mobile were recovered from all the four accused. Consequently, they were arrested on the spot and since, then petitioner is in custody. Learned counsel for the petitioner further submits that petitioner is in custody for the last more than 03 months.

He further submits that petitioner is a young boy of 24 years of age and keeping him inside jail for indefinite period may prove detrimental to his future career and if he is released on bail, chances of his reformation would always be there. He further submits that there are fairly arguable points during the course of the trial showing the innocence of the petitioner. He further submits that further incarceration of the petitioner is not worth in this case.

Per contra, learned State counsel on instructions from ASI Kulwant Singh, submits that after submission of challan, charges have also been framed and total 16 prosecution witness are to be examined. He further submits that petitioner is involved in one more case of similar nature and is on bail in that case.

After considering the submissions of both the sides, and perusing the record with their able assistance, I find that there is some substance in the contentions raised by the counsel for the petitioner. Investigation is already over and further incarceration of the petitioner is not required for any purpose fruitful to anybody and petitioner is inside jail for the last about 03 months and 07 days and recording of statements of the prosecution witnesses is yet to start.

Therefore, in view of the aforementioned facts and circumstances of the case and the submissions made by the parties, the present petition is allowed. Petitioner is ordered to be released on bail in this case, subject to his furnishing bail/surety bonds to the satisfaction of the learned trial Court/ Chief Judicial Magistrate/ Illaqa Magistrate/ Duty Magistrate concerned, if not required in any

other case.

However, it is made clear that in case ever in future, petitioner is found involved in another case of similar nature, prosecution would be at liberty to move an application for cancellation of bail in the present case.

Needless to observe that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation made here-in-above shall not be construed as an expression on the merits of the case and the Trial Court shall decide the case on the basis of evidence available on record.”

Learned counsel for the petitioner submits that recovery in the present case is of one mobile make Redmi Note 8 and one Vivo mobile, shown to be recovered from all the four accused. Learned counsel for the petitioner further submits that petitioner is a young boy of 22 years of age and if left in jail for indefinite period, it may adversely affect his future. He further submits that there are fairly arguable points during the course of the trial showing the innocence of the petitioner. He further submits that further incarceration of the petitioner is not worth in this case.

Per contra, learned State counsel on instructions from ASI Kulwant Singh, submits that petitioner is an habitual offender and is involved in two other cases of similar nature. Therefore, he does not deserve the concession of bail.

I have heard learned counsel for the parties and perused the relevant material on record.

It is noticed that petitioner is a young boy, who as per Stater counsel is involved in two other cases also of similar nature, however, in none of the cases he has been convicted. Petitioner is inside jail since 23rd May, 2022 i.e. for more than four months. Learned State counsel very fairly submits that after completion of investigation, challan has been submitted in

the Court. Therefore, nothing would be achieved by keeping the petitioner inside jail for indefinite period.

Therefore, in view of the aforementioned facts and circumstances of the case and the submissions made by learned counsel for the parties, prayer made in the present petition is allowed. Petitioner is ordered to be released on bail in this case, subject to his furnishing bail/surety bonds to the satisfaction of the learned trial Court/ Chief Judicial Magistrate/ Illaqa Magistrate/ Duty Magistrate concerned, if not required in any other case.

Needless to observe that the petitioner shall not extend any threat and shall not influence any prosecution witness in any manner directly or indirectly.

The observation made here-in-above shall not be construed as an expression on the merits of the case and the Trial Court shall decide the case on the basis of evidence available on record.

It is made clear that in case in future, petitioner is found involved in another case of similar nature, prosecution would be at liberty to move an application for cancellation of bail in the present case.

Petition stands disposed of.

(SANJAY VASHISTH)
JUDGE

September 29, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*