

230

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

CRM-M-42303-2022

Date of decision : 20.09.2022

Shyam Mishra @ Mona Pandit

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Chanchal K. Singla, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is the first petition filed under Section 439 CrPC for grant of regular bail to the petitioner in case FIR No.434 dated 10.11.2021 registered under Sections 148, 149, 302 and 307 of the Indian Penal Code, 1860 (Section 120-B of the IPC added later on) and Section 25/27 of the Arms Act, 1959 at Police Station Faridabad Kotwali, District Faridabad, Haryana.

Learned counsel for the petitioner submits that the petitioner is in custody since 17.11.2021. Investigation in the case is complete and challan has been presented against 8 accused persons. It is submitted that there are 42 prosecution witnesses, out of which, only 03 witnesses have been examined and thus, the trial is likely to take time.

Learned counsel for the petitioner has submitted that in the present case, as per the FIR, Mustak (deceased) and Mubarik (injured) were eating biryani in a shop owned by one Manish and one Arun was also present at the spot. As per the prosecution case, all the said persons i.e. Mubarik (PW-1), Arun (PW-2) and Manish (PW-3) have been examined and they have not supported the case of the prosecution and have been declared to be hostile and have instead submitted that the accused persons including, the present petitioner, are not the persons who hatched the criminal conspiracy to attack the complainant party. It is further submitted that the complainant in the present case was not the eye-witness and had learnt from Mubarik (injured) and Arun that two persons had come on a bike and had shot the brother of the complainant Mustak and had also injured Mubarik. It is submitted that as per prosecution case, two persons who had fired at the deceased Mustak and Mubarik were namely, Vinod Bidhuri and Arun @ Anna. It is submitted that the said two persons were being followed by a Scorpio and Creta car in which several other accused persons, including the present petitioner, were also stated to be travelling, but even in the FIR, no overt act has been attributed to the petitioner with respect to the alleged incident dated 10.11.2021. Reference is made to the disclosure statement of Vinod Bidhuri, who as per the prosecution version is the main accused in the present case and even as per the said statement, the petitioner was not the present along with the main accused on 10.11.2021 i.e. on the date of the alleged occurrence, as on the said date, only 04 persons i.e. Yogesh, Arun @ Ana, Rajesh and Vinod Bidhuri had gone to commit the alleged offence as per the said statement. It is submitted that the

best case against the petitioner, even as per the said disclosure statement and the disclosure statement of the petitioner himself, is that some days prior to the alleged incident, the petitioner, along with a large number of other persons, had conspired to kill the deceased. It is submitted that no recovery has been effected from the present petitioner.

Learned State counsel has opposed the present petition for regular bail and submitted that the petitioner is involved in several other cases and thus, does not deserve the concession of regular bail.

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 and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. 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 perused the material on record.

The petitioner is in custody since 17.11.2021. Investigation in the case is complete and there are 42 prosecution witnesses, out of which only 3 witnesses have been examined so far and thus the trial is likely to

take time. As per the prosecution case, it is Arun @ Anna and Vinod Bidhuri who had gone on a motorcycle on 10.11.2021 and had fired from their respective pistols upon Mubarik and Mustak, as a result of which, Mustak died and Mubarik had suffered gunshot injuries. The best case of the prosecution against the present petitioner is that he had threatened the deceased, along with other persons, few days prior to the date of the alleged occurrence dated 10.11.2021. As per disclosure statement of Vinod Bidhuri, four persons who were present at the spot on the date of the alleged incident i.e. on 10.11.2022 were Yogesh, Arun @ Ana, Rajesh and Vinod Bidhuri and he has not named the present petitioner as one of the persons who was present at the time of the alleged incident. The petitioner was not even named in the disclosure statement of Arun @ Anna. Mubarik, who is the injured eye-witness has been examined as PW-1 and he has not supported the case of the prosecution and has rather submitted that the accused persons, including the present petitioner, were not the persons who had hatched the criminal conspiracy and inflicted injuries. Arun, who is the other eye-witness, has been examined PW-2 and even he, has not supported the case of the prosecution and has been declared to be hostile. Manish has been examined as PW-3 and he is the owner of the Biryani stall where the deceased and the injured were sitting & eating and even he has not supported the case of the prosecution. The complainant in the present case is not an eye-witness. No recovery has been effected from the petitioner.

Keeping in view the abovesaid facts and circumstances and the law laid down in ***Maulana Mohd. Amir Rashadi's*** case (supra) 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 petition.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid order.

20.09.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No