

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-42047-2022

Date of decision : 30.09.2022

Mohit alias Dhandi

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Gautam Dutt, Advocate for
Mr.Manish Soni, Advocate
for the petitioner.

Mr.Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is a second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.198 dated 24.06.2020 registered under Sections 302, 34 IPC (Sections 450, 120 IPC added later on) and Sections 25-54-59 of the Arms Act at Police Station SGM Nagar, Faridabad.

2. Learned counsel for the petitioner has submitted that the petitioner has been in custody since 12.09.2020 and there are 46 witnesses and none of them have been examined and thus, the trial is likely to take time. It is further submitted that the petitioner is not named in the FIR and as per the said FIR, the complainant had seen that three persons going into the house with the deceased and then the complainant was informed by his other brother Raju that three persons had shot at the brother of the complainant (deceased Praveen) and had killed him and in the

supplementary statement dated 12.07.2020 (Annexure P-2), the complainant had specifically stated that the said three persons were Sunny, Manjit and Bachi and the present petitioner was not named therein. Even Raju, who is stated to be an eye witness, had got his statement recorded to the effect that it was the said three persons who had fired at the deceased and the present petitioner was not named therein. The statement of Ankit was also to the same effect. It is submitted that Rohit, who is similarly placed as the present petitioner, has already been granted the concession of regular bail by a coordinate Bench of this Court vide order dated 05.01.2022 passed in CRM-M-48074-2021. It is further submitted that Bharat @ Bhushan, who is also similarly placed as the petitioner, has already been granted the concession of regular bail vide order dated 07.09.2022 passed by this Court in CRM-M-19309-2022 and it is on the statement of Bharat @ Bhushan, the petitioner has been implicated and the only allegation against the petitioner is that he had asked Bharat @ Bhushan to help the main accused and regarding the same, there is no credible evidence. It is stated that the earlier bail petition of the petitioner was dismissed at that stage on 26.11.2021 by a coordinate Bench of this Court. It is further stated that even after the said order, a substantial period of time has elapsed and yet, the trial has not made any progress. It is also stated that after passing of the said order, two of the co-accused of the petitioner have been granted regular bail. Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court passed in case titled as *Parvinder Singh Vs. State of Punjab*, reported as **2003(12) SCC 615**, in support of his argument with regard to maintainability of the second regular bail application after the dismissal of the first. He has further relied upon the judgment passed by the Rajasthan High Court (Jaipur

Bench) (Full Bench) in case titled as ***Ganesh Raj Vs. State of Rajasthan and others*** reported as ***2005(3) RCR (Criminal) 30***, to contend that speedy trial is a constitutional right of the accused provided to him under Article 21 of the Constitution of India and in case, the first regular bail application is dismissed on merits and trial is being delayed then, the petitioner would have the right to file a second bail application on account of delayed trial.

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

4. Learned counsel for the petitioner, in rebuttal, has submitted that the petitioner is on bail in all the cases and 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.”

5. This Court has heard learned counsel for the parties and has perused the paper book.

6. The petitioner has been in custody since 12.09.2020 and there

likely to take time and as per the said FIR, the petitioner has not been named therein and the deceased Praveen had been shot by three boys and as per the supplementary statement of the complainant dated 12.07.2020, the said three boys were namely, Sunny, Manjit and Bachi and the present petitioner was not even named therein. Even statements of eye witnesses Raju and Ankit have been recorded under Section 161 Cr.P.C. and both the said witnesses have also named the above said three persons as the persons, who had fired at the deceased and not the present petitioner. The co-accused Rohit has already been granted the concession of regular bail by a coordinate Bench of this Court vide order dated 05.01.2022 passed in CRM-M-48074-2021 and the case of the petitioner is stated to be on a similar footing as that of the said Rohit. It would be relevant to note that the petitioner had earlier filed CRM-M-23321-2021 which was dismissed by a coordinate Bench of this Court on 26.11.2021 at that stage. After passing of the said order, two co-accused of the petitioner, i.e. Bharat @ Bhushan and Rohit have been granted regular bail. The case of the petitioner is stated to be similar to that of co-accused Bharat @ Bhushan.

7. The Hon'ble Supreme Court in **Parvinder Singh's** case (supra) has held as under:-

“2. In Criminal Appeal No.57-DB of 2001 an application for grant of bail was filed by the appellant being Criminal Miscellaneous No. 53713 of 2002. The bail application has not been examined on merits and has been dismissed holding that it is not maintainable, as against an earlier order of the High Court rejecting bail, a special leave petition was filed before this Court which was dismissed as withdrawn. The second ground stated in the impugned order is that the bail application has been rejected on three earlier occasions. The fact that earlier bail application was rejected and the special leave petition was dismissed as withdrawn would not make the fresh

bail application legally not maintainable. The High Court can always consider fresh circumstances and subsequent events. The same would be the position regarding the earlier rejections. In this view, we are unable to sustain the impugned order dated 7th January, 2003. The bail application (Criminal Miscellaneous No. 53713 of 2002) shall be decided afresh on merits. We request the High Court to decide the application before the close of the court for winter vacation.

3. The appeal is disposed of accordingly.”

8. A perusal of the the above judgment would show that it was observed by the Hon'ble Supreme Court that even in case, the earlier bail application of the accused was rejected and the SLP against the same was dismissed as withdrawn, the same would not make the fresh bail application legally not maintainable and the Hon'ble Court can consider the subsequent bail application after taking into account fresh circumstances and subsequent events.

9. Hon'ble Full Bench of Rajasthan High Court in **Ganesh Raj's case** (Supra) has held has under:-

“Speedy trial is a Constitutional right of the accused provided to him by [Article 21](#) of the Constitution. If first application of the accused who is in custody is dismissed on merits and the trial is delayed, the accused has a right to make second bail application on the ground of delayed trial [Section 439](#) relates to Constitutional right of the accused whereas [Section 438](#) to his statutory right. The provisions of [Section 438](#) should not be put to abuse at the instance of unscrupulous accused.”

10. A perusal of above judgment would show that it has been observed that speedy trial is a constitutional right of the accused provided to him under Article 21 of the Constitution of India and in case, the accused is in custody and his first bail application was dismissed on merits and the trial is being delayed, then, the accused has a right to file a second bail application

on the ground of delayed trial. It was further observed that Section 439 relates to the constitutional right of the accused.

11. This Court is of the view that the observations made by the Hon'ble Supreme Court and the Hon'ble Full Bench of Rajasthan High Court would fully apply to the facts of the present case inasmuch as the petitioner has been in custody since 12.09.2020 and earlier bail petition was dismissed at that stage on 26.11.2021 and out of 41 witnesses, no witness has been examined, thus, the trial has not made any substantial progress. The co-accused of the petitioner Bharat @ Bhushan and Rohit, who are similarly placed as the present petitioner, have already been granted the concession of regular bail.

12. Keeping in view the above-said facts and circumstances as well as the law laid down in the above-said judgments passed by the Hon'ble Supreme Court and by the Hon'ble Full Bench of Rajasthan High Court in ***Ganesh Raj's case*** (Supra), which have been reproduced hereinabove, 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 concerned trial Court/Duty Magistrate and subject to him not being required in any other case. The petitioner shall also abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioner will not pressurize / intimidate the prosecution witness(s).
3. The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
4. The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.

5. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.
13. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.
14. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court 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 30, 2022
Davinder Kumar

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