

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(106 + 219)

CRM-M-47260-2021 (O&M)

Date of decision: - 20.07.2022

Ajay

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Pardeep Bhardwaj, Advocate,
for the petitioner.

Mr. Anmol Malik, DAG, Haryana.

Mr. Ashit Malik, Advocate
for the complainant.

VIKAS BAHL, J. (ORAL)

CRM-24180-2022

Present application has been filed under Section 482 Cr.P.C.
for placing on record the copy of the examination of the main witness
namely Amit as Annexures P-3 and P-4.

Application is allowed, as prayed for. Copy of the
examination of the main witness Amit (Annexures P-3 and P-4) is taken
on record, subject to all just exceptions.

CRM-M-47260-2021

This is a first petition under Section 439 Cr.P.C. for grant of

regular bail in FIR No.139 dated 05.08.2020, under Sections 302 and 34 IPC (Sections 201, 120-B and 212 IPC have been added later on) and Sections 25/27/54/59 of the Arms Act, registered at Police Station Mohana, District Sonapat.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has not been named in the FIR and although in the FIR, three persons i.e., Sanjay, Nitin and Prince had been named by the complainant as the persons regarding whom he had suspicion that they had killed his father Narender Singh. It is submitted that the petitioner is sought to be implicated on the basis of the disclosure statement of co-accused Nitin and as per the said disclosure statement also, the present petitioner has not been attributed any injury, nor he has been stated to be carrying any weapon and the only role attributed to the present petitioner is that he was sitting on the motorcycle and waiting for the said three persons to come back and thereafter, had helped the said three persons to escape from the place of occurrence. It is further submitted that as per the prosecution version, the gun shots had been fired at the deceased by Nitin, Ashwani and Prince and the present petitioner has been in custody since 27.08.2020 and the challan has already been presented and out of total 23 prosecution witnesses, only six have been examined and thus, the trial is likely to take time. It is further submitted that in the present case, no recovery, much less, of the motorcycle, has been effected from the present petitioner.

Learned State counsel as well as learned counsel appearing for the complainant have opposed the present petition for regular bail and

have submitted that in the present case, Narender has been brutally killed on account of the gun shots injuries and in the entire incident, even the present petitioner had participated and had helped the three persons who had fired at Narender and the present petitioner was waiting with the motorcycle in order to help the said three persons. It is also submitted that the petitioner is involved in one more case, in which, one of the alleged offence is under Section 379-B IPC.

Learned counsel for the petitioner, in rebuttal, has submitted that the petitioner has already been granted bail in the said case 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.”

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

The petitioner is in custody since 27.08.2020 and the challan has already been presented and out of total 23 prosecution witnesses, only

six have been examined and thus, the trial is likely to take time. The petitioner was not named in the FIR and the complainant Amit had specifically named three persons i.e., Sanjay, Nitin and Prince as the persons regarding whom he had suspicion with respect to murder of his father Narender. As per the prosecution case, the petitioner has been implicated on the basis of the disclosure statement of co-accused Nitin and also on the disclosure statement suffered by the petitioner himself. As per the said disclosure statement, it was Nitin, Ashwani and Prince, who had fired at the deceased and the present petitioner had not caused any injury to the deceased, nor was armed with any weapon. The only role attributed to the petitioner is that he was sitting on the motorcycle and had kept the ignition on so as to help the said three persons in escaping from the place of occurrence. No recovery has been effected from the petitioner, much less, of the said motorcycle.

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

July 20, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	No