

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

209

CRM-M-47695-2021 (O&M)

Date of Decision: 06.04.2022

ROHIT @ GHOLU @ MHOLU

... Petitioner

Versus

STATE OF HARYANA

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Deepender Singh, Advocate for the petitioner.
Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

* * * *

VINOD S. BHARDWAJ, (Oral)

The instant petition has been filed under Section 439 of the Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.479, dated 11.08.2020 under Sections 387, 395, 506 IPC (Sections 325, 201, 120-B added later on) registered at Police Station Hansi City, District Hisar.

Learned counsel appearing on behalf of the petitioner submits that the name of the petitioner did not figure out in the instant FIR, and that he had not been attributed any specific injury caused to the complainant or to any other person. It is pointed out that the FIR in question has been registered at the instance of one Ankit son of Hans Raj resident of Hansi City, alleging that 8-10 boys alongwith one Vikas came to his shop and started beating him. It is alleged that the assailants took away cash amount of Rs.60,000/- and one gold chain of three tola from the *galla* of the shop. It is submitted that the named and identified assailant Vikas @ Bhasuri has already been granted the concession of regular bail by this Court vide order dated 08.10.2021 passed in CRM-M-10664 of 2021. He further pointed out that as many as 11 persons have been charge sheeted by the investigating agency in the aforesaid case, out of whom, 10 have already been granted the concession of bail. He further argued that the petitioner is in custody since 20.08.2020 and the trial of the case is yet to commence as no prosecution witness has been examined so far.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana, who is present in

the Court, has opposed the bail application by pointing out that there are as many as 17 other cases in which the petitioner is involved. He further submits that recovery of Rs.1,000/- was effected from the petitioner and that being a habitual offender, no such concession should be extended to the petitioner.

While controverting the objections raised by the learned State counsel, learned counsel for the petitioner has pointed out that out of 17 cases, so referred by the learned State counsel, the petitioner already stands acquitted in 7 cases and has been convicted in 4. He further points out that there are six cases that are pending trial. He, however, submits that in all the aforesaid 10 cases, the petitioner is either on bail or his sentence has been suspended. He has further made a reference to the order dated 01.10.2020 passed by the Addl. Sessions Judge, Hisar, in the matter of co-accused Vijay @ Gagu to point that even the said accused was also involved in as many as 13 other cases, however, taking into consideration the period of custody undergone, the said accused has also been granted the concession of bail by the Addl. Sessions Judge, Hisar. He submits that the case of the petitioner cannot be treated at any variance.

I have heard the counsel for respective parties.

The Hon'ble Supreme Court has already held in the matter of **Maulana Mohd. Amir Rashadi Vs. State of U.P.** reported as **2012(2) SCC 282** that the mere fact that a person is a habitual offender cannot form the basis of continued incarceration of an accused in perpetuity. Rejection of bail cannot be devised as a measure of inflicting of a sentence. There is nothing to determine as to how the case of the petitioner would not be at parity with the other 10 accused persons, who have already been granted the concession of bail. The only variance pointed out by the learned State counsel about his involvement in other cases also does not seem to hold firm ground inasmuch as the other co-accused, namely, Vijay @ Gagu, against whom 13 cases stand registered, has already been granted the concession of bail by the Addl. Sessions Judge, Hisar vide order dated 01.10.2020 and there has been no challenge to the said order.

Therefore, in view of the above and taking into consideration

the stage of trial as also the period of custody already undergone by the petitioner as under-trial coupled with the fact that no prosecution witness has been examined so far, I deem it appropriate to enlarge the petitioner on regular bail.

Accordingly, the instant petition is allowed and the petitioner is admitted to regular bail subject to his furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate, concerned.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation made hereinabove 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 available material.

(VINOD S. BHARDWAJ)
JUDGE

06.04.2022

rajender

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No