

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-44435-2022(O&M)
Date of decision : 14.12.2022

Irfan @ Irphan

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Peeush Gagneja, Advocate
for the petitioner.

Mr.Surinder Kumar Dogra, DAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is the second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.1046 dated 21.11.2021 registered under Section 379 IPC (challan presented under Sections 379, 411, 420, 467, 468, 471, 120-B IPC) at Police Station Sadar, District Hisar.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 22.12.2021 and the investigation is complete and the challan has already been presented and there are 8 witnesses, out of which, 2 witnesses have been examined and thus, the trial is likely to take time. It is further submitted that earlier bail application of the petitioner was dismissed as withdrawn at that stage on 13.05.2022 and subsequent to the same, 2 witnesses i.e., PW-1 Naseeb and PW-2 Sandeep (complainant), who are owner and driver of the truck in question, respectively have been examined and they have not supported the case of

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that recovery of the truck in question has been effected from the present petitioner and thus, merely because the complainant and the owner have not supported the case of the prosecution, the petitioner should not be granted the concession of regular bail. It is further submitted that the petitioner is involved in two other cases.

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 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.

Keeping in view the above said facts and circumstances moreso, the fact that petitioner has been in custody since 22.12.2021 and the investigation is complete and the challan has already been presented and there are 8 witnesses, out of which, 2 witnesses have been examined and thus, the trial is likely to take time and also the fact that two star witnesses

driver of the truck) have not supported the case of the prosecution and have not stated anything against the present petitioner and also the fact that recovery has already been effected and in view of the law laid down in ***Maulana'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.

Pending miscellaneous application stands disposed of in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

December 14, 2022

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No