

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

224

CRM-M-46691 of 2022

Date of decision : 08.12.2022

Shashi Bhushan Patel

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Tejinderbir Singh, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, Sr. DAG, Punjab.

VIKAS BAHL, J.(ORAL)

This is the fifth petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No. 17 dated 15.02.2017 registered under Sections 365, 302, 201, 120-B and 34 IPC at Police Station Sadar Bathinda, District Bathinda.

Learned counsel for the petitioner has submitted that the last bail application filed by the petitioner was dismissed as withdrawn on 24.08.2022 with liberty to file a fresh petition after annexing the relevant documents including the statements of Kumkum Shukla and Triveni Shukla. In pursuance of the said permission granted, the present petition has been filed after annexing the relevant documents including the above said statements. It is submitted that the bail application prior to the same was withdrawn on 23.09.2021 at that stage and the petitioner has been in custody since 25.09.2019 and there are 34 prosecution witnesses, out of which, none have been examined and thus, the trial is likely to take time.

Learned counsel for the petitioner further submitted that even after the

passing of the order dated 23.09.2021, substantial period of time has lapsed. It is submitted that all the bail applications earlier filed were withdrawn and none was dismissed on merits. It is also argued that the petitioner was not named in the FIR and the FIR was initially registered by the complainant-Kumkum Shukla under Section 365 IPC on account of disappearance of her husband. In her supplementary statement, which was recorded on 21.02.2017 after a period of 6 days, the petitioner had named 3 accused persons which included Sailesh Kumar and Anuradha and the present petitioner and the same was done on the basis of hearsay inasmuch as in the statement, it has been stated that she had heard two boys talking about the same. To similar effect, the statement of Triveni Shukla was recorded on 21.02.2017. It is submitted that there is no eyewitness in the present case and no recovery has been effected from the present petitioner and the petitioner is not involved any other case and thus, the petitioner deserves the concession of regular bail on account of his custody and stage of the case and also all the above said facts.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that there are two other accused in the present case i.e Sailesh Kumar and Anuradha and Sailesh Kumar has been convicted under Section 302 IPC and Anuradha w/o Shailesh Kumar has been convicted under Section 202 IPC and the present petitioner was arrested in the year 2019 but the FIR was lodged in the year 2017.

Learned counsel for the petitioner, in rebuttal, has been submitted that as far as Sailesh Kumar is concerned, the dead body has been recovered from his house and thus, the case of the petitioner cannot be

equated with the Suresh Kumar.

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

In the present case, petitioner has been in custody since 25.09.2019 (more than three years and two months) and investigation is complete and challan has been presented and out of 34 prosecution witnesses, none have been examined and thus, the conclusion of trial is likely to take time. The earlier bail applications filed by the petitioner were not decided on merits and the petitioner was not named in the FIR and the FIR was got registered by Kumkum Shukla under Section 365 IPC on 15.02.2017 on the allegations that her husband was missing. Thereafter, Kumkum Shukla has recorded statement on 21.02.2017 in which she had named three persons including the present petitioner by stating that she had heard two boys saying that the said three persons named by her had murdered the deceased. To similar effect is the statement of Triveni Shukla-father of the deceased, recorded on 21.02.2017. It is submitted that there is no eyewitness in the present case and no recovery has been effected from the petitioner. The recovery of the dead body has also been effected from the house of Sailesh Kumar, not from the house of the present petitioner.

Keeping in view the above said facts and circumstances, 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.

(VIKAS BAHL)
JUDGE

December 08, 2022
Rajeev (rvs)

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