

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-51841-2021

Date of Decision:-20.05.2022

Harinder @ Harsh.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. R.S. Malik, Advocate &
Ms. Kamaljeet Kaur, Advocate for the Petitioner.

Mr. Vikrant Pamboo, DAG Haryana.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition is for the grant of regular bail under Section 439 Cr.PC in case FIR No.169 dated 10.08.2020 under Sections 395, 201 IPC and Sections 25/54/59 of Arms Act registered at Police Station Julana, District Jind, Haryana.

The brief facts of the case are that one Satnam Singh son of Nachhatar Singh got recorded his statement to the effect that he was working as a driver of a Scorpio vehicle bearing registration No.PB-01-7622, which had been taken on rent by a company. On 10.08.2020 when he was proceeding from Kaithal to Rohtak alongwith one Vivek who was employed as Engineer in the company and reached near village Kilazafargarh a white colour vehicle came from behind and parked in front of his vehicle. One boy was sitting on the front side and two boys from the rear seat alighted and came towards the vehicle of the complainant. One of the two boys who was armed with pistol put it on his temple and other two boys pointed a pistol on Vivek after opening his window. The boy who put

the pistol on the temple of the complainant snatched the keys of the vehicle and after asking the complainant and Vivek to get out of the vehicle fled away with Scorpio vehicle and its articles. Based on the aforementioned complaint, FIR came to be registered.

The counsel for the petitioner contends that the name of the petitioner is not mentioned in the FIR and he has been falsely implicated. He submits that the investigation in the present case is complete and as many as 26 prosecution witnesses are to be examined out of whom only 07 have been examined so far and the complainant Satnam Singh has not supported the case of the prosecution. He thus contends that petitioner is in custody since 11.01.2021 and the trial is not likely to be concluded in near future. Therefore, the petitioner deserves the concession of bail.

The Counsel for the State on the other hand contends that the petitioner was arrested in FIR No.188 where he suffered a disclosure statement regarding his involvement in the present case. Thereafter the investigation unfolded and other co-accused came to be arrested. The vehicle and the weapon have been made case property in the other FIR against the six accused in the present case, namely, Sudhir, Shekhar, Navdeep @ Chhota, Vikas, Harinder @ Harsh (the present petitioner) and Karan. He contends that as many as 06 other FIRs have been registered against the petitioner as is borne out from para no.08 of the reply filed by the state.

I have heard counsel for both the parties at length.

The petitioner is in custody since 11.01.2021 and seven prosecution witnesses have already been examined. Satnam Singh, complainant has been examined as PW-1 and he clearly states that the accused were not amongst those, who had committed the robbery. So far as the other cases are concerned, petitioner has been granted the concession of bail in FIR No.309 dated 16.09.2020 under Section 147, 148, 149, 307 IPC and 25 of Arms Act registered at PS Sadar, Hansi and FIR No.174 dated 13.09.2020 under Sections 392, 397 IPC and Section 25 Arms Act registered at P.S. City Narwana. Even otherwise in the present case, once the complainant has turned hostile it would be a matter of final adjudication during the course of trial as to whether the other evidence available on record is sufficient to convict the Petitioner.

The Hon'ble Supreme Court in ***Maulana Mohd. Amir Rashadi Vs. State of U.P. & Anr. 2012(1) R.C.R.(Criminal) 586*** has held as under:-

“ It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. 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 in ***Rajender Singh V/s State of Haryana CRM-40431-2021 in CRA-D-1640-DB-2014 Decided on 19.01.2022*** held as under:-

“ We are quite conscious of the fact that the applicant in the present case is a prior convict, and therefore, his case would be an exception to the ratio of the law laid down in Daler Singh's case (supra). However, on having examined the factual matrix in the case of the applicant, we are inclined to suspend the rest of the sentence of the applicant for the following reasons:-

*(i) The applicant has undergone approximately 09 years of his substantive sentence of 12 years i.e. 03 years more than the prescribed period under **Daler Singh's case (supra)**.*

(ii) The applicant was convicted in FIR No. 244 dated 10.05.2006 in which he was sentenced for 02 years, and he has undergone the same. In the second conviction in FIR No. 84 dated 21.07.2006, the applicant was sentenced for 10 years and he has been granted bail vide order dated 03.12.2009. So, as on date, the applicant is in custody only in the present

case.

(iii) *If pendency of other FIRs is the only consideration for denial of bail, then whenever a convict/under- trial applies for bail, the same would be denied simply looking at the pendency of another case. While, it is true that the grant of bail/suspension of sentence would have to be looked at in the larger context of the criminal antecedents of the accused/convict, it is equally true that the appreciation of evidence in the trial/appeal would have to be with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases against him. Therefore, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions would put the accused in vicious loop of never being granted bail because the bail in each case would be denied due to the pendency of another case/conviction. This would clearly be violative of the right to speedy trial/expeditious disposal of an appeal as recognized under Article 21 of the Constitution of India, as the accused would never be granted bail in any case leading to indefinite periods of incarceration assuming of course that the appeal is not heard within a reasonable period of time.*

(iv) *The appeal, in the present case, which stands admitted on 14.11.2014, is not likely to be heard in the near future due to the COVID-19 pandemic, which does not show sign of abating.*

In view of the aforesaid discussion, we are of the view that the applicant ought to be released on bail having undergone 08 years 11 months and 19 days of his substantive sentence of 12 years.”

Keeping in view the above mentioned facts, more particularly the period of incarceration undergone by the petitioner and the fact that the trial is not likely to be concluded in near future, the present application is

allowed and the petitioner-**Harinder @ Harsh** son of Sh. Mukesh is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing that he is not involved in any other crime other than the present case.

If the petitioner indulges in similar offence for which he is currently charged, the State would be at liberty to move an application for cancellation of bail.

Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

May 20, 2022
Vinay

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