

S.No.211

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

CRM-M-152 of 2022 (O&M)

Date of Decision:11.01.2022

Mubarik Khan

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Saurabh Garg, Advocate for the petitioner.

Mr. Karan Garg, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J.

This is the first petition under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in case FIR No.159 dated 24.08.2020 under Sections 136, 137 of the Electricity Act, 2003 and Section 427 IPC registered at Police Station Babain, District Kurukshetra.

Learned counsel for the petitioner has submitted that in the present case, the case of the prosecution was that on the midnight of 18.08.2020, some unknown persons had committed theft of a transformer and other articles. It is further the case of the prosecution that it was while the petitioner was being interrogated in another FIR bearing No.139 of 2020, that the petitioner and the other co-accused had disclosed about the commission of the theft in the present case and also in other cases and ultimately, recovery was made from the petitioner and the co-accused.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 04.02.2021 and in the present case, the challan has already been presented and there are as many as 16 witnesses,

none of whom have been examined and, as such, the trial is likely to take time and it is also submitted that the recovery has already been effected in the present case and, thus, no useful purpose will be served by keeping the petitioner in incarceration.

Learned counsel for the petitioner has relied upon the order dated 26.11.2021 passed by a Co-ordinate Bench of this Court in CRM-M-41997-2021 titled as Aash Mohammad and another Vs. State of Haryana.

Learned counsel for the State, on instructions from ASI Baljinder, has opposed the present bail application and has submitted that the petitioner is a habitual offender and there are as many as 32 cases against the present petitioners, out of which, in 26 cases, he has been granted bail. As far as the period of custody and the factum of the order passed by the Co-ordinate Bench of this Court is concerned, the same has not been disputed.

Learned counsel for the petitioner has further submitted that the order dated 01.12.2021 passed in favour of Aash Mohammad, co-accused in CRM-M-41547 of 2021 would also support the case of the present petitioner inasmuch as the petitioner is absolutely on the same footing as the said Aash Mohammad. Further reliance has been placed upon the judgment of the 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 and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. 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.”

Keeping in view the above-said facts and circumstances moreso, the fact that the petitioner has been in custody since 04.02.2021 and there are 16 witnesses, none of whom have been examined as yet, and the petitioner was not initially named in the FIR and has been implicated in the case while being interrogated in another FIR and also the fact that recovery has already been effected in the present case and a Co-ordinate Bench of this Court, in the case of the petitioner in another FIR i.e. FIR No.427 dated 28.09.2020, after considering the similar facts as have arisen in the present case, was pleased to grant regular bail to the petitioner by imposing strict conditions, the present petition for grant of regular bail is allowed subject to his furnishing personal and surety bonds of a local surety each before the Trial Court/Chief Judicial Magistrate/Duty Magistrate concerned and also subject to his not tampering with prosecution evidence and also not influencing prosecution witnesses and also subject to the petitioner appearing before the Trial Court on each and every date except on the date when their personal appearance is exempted and also subject to his not being required in any other case.

It is made clear that in case the petitioner violates the abovesaid

conditions or indulges in any criminal activity again, then it would be open

to the State to move an application for cancellation of the present bail order.

However, 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 application.

January 11, 2022	(VIKAS BAHL)
renu	JUDGE
Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No