

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-51609-2022

Date of decision : 15.11.2022

Sumit @ Shami

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Rajiv Kataria, Advocate and
Mr.Aman Joon, Advocate
for the petitioner.

Mr. Vishal Malik, DAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.752 dated 06.11.2020 registered under Sections 272, 420, 467, 468, 471 IPC and Sections 72-A-20 of the Punjab Excise Act 1914 (Haryana Amendment Bill, 2020) at Police Station Sonipat City, District Sonipat.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 06.04.2022 and the investigation is complete and the challan has already been presented qua the petitioner and there are 33 witnesses, out of which, 13 have been examined and thus, the trial is likely to take time. It is submitted that the petitioner is not named in the FIR and it is only one Pawan @ Golu who is named in the FIR and it is from said Pawan @ Golu that recovery of 14 bottles of spurious liquor has been effected and said Pawan @ Golu has been granted concession of regular bail by the Sessions Judge, Sonipat vide order dated 10.11.2021. It

disclosure statement of Naresh @ Nessi, Kuldeep @ Hudda and Anil @ Leela but even subsequent to the same, no recovery has been effected from the petitioner.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the petitioner is involved in a large number of cases and is a habitual offender. The other aspects have, however, not been disputed.

Learned counsel for the petitioner, in rebuttal, has submitted that even the other FIRs have been registered on the basis of disclosure statement and no recovery has been effected from the petitioner in any of the said cases. Reliance has been placed 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.

The petitioner has been in custody since 06.04.2022 and the investigation is complete and the challan has already been presented qua the petitioner and there are 33 witnesses, out of which, 13 have been examined

and thus, the trial is likely to take time. The petitioner is not named in the FIR and one Pawan @ Golu has been named in the FIR and when the raid was conducted, 14 bottles of spurious liquor had been recovered from the said Pawan @ Golu. The petitioner is sought to be implicated on the basis of disclosure statement of Naresh @ Nessi, Kuldeep @ Hudda and Anil @ Leela but even subsequent to the same, no recovery has been effected from the petitioner. Said Pawan @ Golu from whom recovery has been effected, has been granted concession of regular bail by the Sessions Judge, Sonipat vide order dated 10.11.2021.

Keeping in view the above said facts and circumstances 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.

(VIKAS BAHL)
JUDGE

November 15, 2022

Davinder Kumar