

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

CRM-M-52277-2022

Date of decision : 21.12.2022

Hitesh @ Happy

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Rajat Mor, Advocate
for the petitioner.

Mr. R.K. Ambavta, Asstt. Advocate General, Haryana
for the respondent-State with ASI Paramjit Singh

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.185 dated 18th of May, 2016 registered for the offences punishable under Sections 302, 34 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959 (subsequently added Section 120-B IPC), at Police Station Kharkhoda, District Sonipat.

2. Ld. Counsel for the petitioner submits that the petitioner is in custody since 10th of August, 2016. He refers to order dated 20th of March, 2020 to contend that the prosecution evidence stood concluded and the matter was adjourned for recording the statement of the accused for 4th of April, 2020. However, thereafter an application under Section 311 of the Code was moved by the prosecution and despite having taken two years

seven months the matter is still being adjourned for prosecution witnesses. He, thus, submits that delay caused by the prosecution is costing the petitioner as he is being denied right to expeditious trial. On merits he submits that bare perusal of the FIR would reveal that petitioner was admittedly not even present on the day the occurrence took place. An occurrence of 17th of May, 2016 has been alleged in the FIR only to implicate the petitioner even though admittedly on the fateful day he was not present. He submits that the petitioner has been implicated merely on the basis of disclosure statement suffered by the accused who has been attributed the gun-shot injury which itself would not be admissible in evidence to drive-home guilt of the petitioner.

3. Ld. State Counsel appearing for the State has emphatically opposed the prayer made by the petitioner. He submits that during investigation motive behind the occurrence has been attributed only to the petitioner and from the sequence of the occurrence, it is evident that it is the petitioner only who was the master-mind. Apart from that State Counsel submits that the conduct of the petitioner would itself be enough to decline any concession of bail to him as he is facing more than 10 cases involving serious offences. Chart thereof has been tabulated in Para 9 of the reply filed on behalf of the prosecution, which reads as under :

“(i) FIR No.308 dated 25.07.2016, under Sections 25/54/59 Arms Act, Police Station Bawana, Delhi, in which he stands acquitted 30.04.2019.

- (ii) FIR No.107 of 2011, under Section 25 Arms Act, Police Station Bawana, Delhi, which is still pending trial.
- (iii) FIR No.66 of 2010, under Sections 363/376/506/324/34 IPC, Police Station Bawana, Delhi, in which he stands convicted on 03.09.2022.
- (iv) FIR No.457 of 2012, under Sections 147/186/353/332 IPC, Police Station Samaypur Badli, Delhi, in which he stands acquitted on 31.10.2019.
- (v) FIR No.303 of 2016, under Sections 302/34 IPC and 25 Arms Act, Police Station City, Gohana, which is still pending trial.
- (vi) FIR No.177 of 2019, under Sections 302/34 IPC and 25 Arms Act, Police Station Bawana, Delhi, which is still pending trial.
- (vii) FIR No.227 of 2019, under Sections 307/120-B/34 IPC and 25 Arms Act, Police Station Bawana, Delhi, which is pending trial.
- (viii) FIR No.273 of 2019, under Sections 307/506/34 IPC and 25 Arms Act, Police Station Bawana, Gohana, which is pending trial.
- (ix) FIR No.204 of 2019, under Sections 392/34 IPC and 25 Arms Act, Police Station Bawana, Delhi, which is pending trial.
- (x) FIR No.232 of 2021, under Sections 307/324/34 IPC and 25 Arms Act, Police Station Harsh Vihar, Delhi, which is pending trial.”

4. Faced with the situation, Counsel for the petitioner submits that in majority of the cases the petitioner is on bail apart from three cases and in one of the case he has earned acquittal as well. Counsel for the petitioner relies on the laid down by the Apex Court in **Maulana Mohd. Amir**

Rashadi vs. State of U.P. and another, (2012) 2 SCC 382 and **Prabhakar Tewari vs. State of U.P. and another, (2020)11 SCC 648.**

5. In **Maulana Mohd. Amir Rashadi**'s case (supra), Apex Court held as under :

“6. 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.”

6. The same was further relied upon in **Prabhakar Tewari**'s case (supra) wherein the question w.r.t. considering of criminal antecedents while considering bail was answered as under :-

“5. We have considered the respective submissions. The facts highlighted by the appellant are that the case involves offence under Section 302 read with Sections 120-B/34, 147, 148 and 149 of the Indian Penal Code, 1860. The accused has several criminal cases pending against him and has been named in the statement forming the basis of the FIR on the date of occurrence itself. Two individuals, Rahul Tiwari and Narendra Dev Upadhyay, whose statements have been recorded under Section 161 of the 1973 Code also refer to involvement of the accused Vikram Singh.

6. In the case of ***Mahipal Vs. Rajesh Kumar @ Polia & Anr.***

(Criminal Appeal No.1843 of 2019) decided on 5th December, 2019, a coordinate Bench of this Court has discussed the scope of jurisdiction of the appellate Court in setting aside an order of granting bail. The two key factors for interfering with such an order are non-application of mind on the part of the Court granting bail or the opinion of the Court in granting bail is not borne out from a prima facie view of the evidence on record. In the case of *Maulana Mohammed Amir Rashadi vs. State of Uttar Pradesh and Another [(2012) 2 SCC 382]*, a two Judge Bench of this Court declined to interfere with an order of the High Court granting bail to an accused having considered the factual features of that case.

7. On considering the submissions of the learned counsel for the parties. Having regard to the circumstances of this case, in our opinion, there has been no wrong or improper exercise of discretion on the part of the High Court in granting bail to the accused. The factors outlined in the case of Mahipal (supra) for testing the legality of an order granting bail are absent in the order impugned. The materials available do not justify arriving at the conclusion that the order impugned suffers from non-application of mind or the reason for granting bail is not borne out from a prima-facie view of the evidence on record. The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail. The High Court has exercised its discretion in granting bail to the accused Vikram Singh upon considering relevant materials. No ex-facie error in the order has been shown by the appellant which would establish exercise of such discretion to be improper. We accordingly sustain the order of the High Court granting bail. This appeal is dismissed.”

7. Having heard counsel for the parties and after going through

the records of the case, without commenting on the merits thereof and keeping in view the prolonged incarceration suffered by the petitioner, in the peculiar facts & circumstances of the present case, the present petition is allowed. The petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

8. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

December 21, 2022		(PANKAJ JAIN)
Dpr		JUDGE
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No