

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(209)

CRM-M-54960-2022

Date of decision: - 02.12.2022

Anil Kumar

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Anshumaan Dalal, Advocate, for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is the first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.250 dated 30.06.2021, under Sections 302, 212, 120-B and 34 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, registered at Police Station Baroda, District Sonipat.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has been falsely implicated and there is no legally admissible evidence against the present petitioner to connect him with the alleged crime. It is submitted that the petitioner is not named in the FIR and as per the FIR, co-accused Jaidev along with one unknown person had gone on a motorcycle and had shot with a pistol at the deceased Parvinder, who was the brother of the complainant Parveen and fled from the spot. It is further submitted that as per the case of the

prosecution, the person who had gone along with co-accused Jaidev was one Sushil @ Mithu. It is argued that it is not the case of the prosecution that the petitioner was also present at the place of the alleged occurrence and the petitioner is sought to be implicated solely on the basis of supplementary statement made by the complainant on 29.08.2021 i.e., after a period of 59 days from the date of registration of the FIR and even as per the said supplementary statement, the petitioner is not attributed any specific overt act or role and the only allegation made against the present petitioner is that the petitioner conspired with the other accused persons to murder the brother of the complainant. It is also submitted that it is not being stated by the complainant as to from where and how he has confirmed/assumed the fact that the present petitioner had also conspired for the commission of the alleged offence. It is stated that the petitioner is in custody since 03.02.2022 and there are 21 prosecution witnesses, none of whom have been examined and the co-accused of the petitioner i.e., Jagpal has already been granted the concession of regular bail by this Court vide order dated 05.09.2022, passed in CRM-M-31747-2022.

Learned State counsel on the other hand has opposed the present petition for regular bail and has submitted that the present petitioner was also a part of the conspiracy to murder the deceased and the said fact is apparent from the supplementary statement of the complainant. It is submitted that the present petitioner is involved in one other case and thus, does not deserve the concession of regular bail.

Learned counsel for the petitioner in rebuttal has relied 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 gone through the paper-book.

The petitioner has been in custody since 03.02.2022 and there are 21 prosecution witnesses, none of whom have been examined, thus, the trial is likely to take time. The petitioner was not named in the FIR. As per the FIR, one Jaidev and one unknown person had gone and shot the brother of the complainant. The said Jaidev was accompanied by an unknown person, who as per the case of the prosecution, is one Sushil @ Mithu. The incident occurred on 30.06.2021 and the FIR had also been got registered on 30.06.2021 and thereafter, the supplementary statement of Parveen (complainant) was recorded on 29.08.2021 (Annexure P-2) and it was only in the said supplementary statement that the name of the petitioner surfaced and even as per the said supplementary statement, neither any overt act or injury has been attributed to the present petitioner,

nor it has been stated that the petitioner was present at the place of occurrence and the only role attributed to the present petitioner is that he was also a part of the conspiracy hatched to kill Parvinder. No recovery has been effected from the present petitioner even subsequent to his arrest. Co-accused of the petitioner, namely, Jagpal, has already granted the concession of regular bail by this Court, vide order dated 05.09.2022, passed in CRM-M-31747-2022 and the case of the petitioner is on a similar footing as that of the said co-accused Jagpal.

Keeping in view the above said facts and circumstances as well as in view of the law down in **Maulana Mohd. Amir Rashadi'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.

December 02, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No