

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-58328-2022

Date of decision : 19.12.2022

Ashwani @ Gulzar

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.V.B.Godara, Advocate
for the petitioner.

Mr. Vishal Malik, DAG, 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.405 dated 05.06.2021 registered under Sections 397, 506, 285 IPC and Section 25 of the Arms Act at Police Station Sadar Hisar, during the pendency of the trial.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 15.06.2021 and the investigation is complete and the challan has already been presented and there are 23 witnesses, out of which, 5 have been examined and thus, the trial is likely to take time and the petitioner is not involved in any other case. It is further submitted that the petitioner was not named in the FIR and the FIR was registered against the unknown persons and as per the prosecution case, the role attributed to the present petitioner was that he along with co-accused Karan was guarding the petrol pump when his co-accused were committing

well as eye witnesses PW-2 Sumit, PW-4 Ram Mehar and PW-5 Suresh Kumar have been examined and none of them have recognized the present petitioner and they have turned hostile and not supported the case of the prosecution. It is further submitted that no injury has been caused to any person.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the recovery of Rs.3200/- as well as country made pistol .315 has been effected from the petitioner and the petitioner is involved in 7 other cases.

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 perused the paper book.

Keeping in view the above said facts and circumstances moreso, the fact the petitioner has been in custody since 15.06.2021 and the

there are 23 witnesses, out of which, 5 have been examined and thus, the trial is likely to take time and the petitioner is stated to be not involved in any other case and the petitioner was not named in the FIR and no person was injured and the role attributed to the present petitioner was of his guarding the petrol pump at the time when the alleged incident was being committed and also the fact that PW-1 Vijender Singh (complainant) as well as eye witness PW-2 Sumit, PW-4 Ram Mehar and PW-5 Suresh Kumar have turned hostile and have not supported the case of the prosecution and have not identified the present petitioner as a person who had committed the offence and also keeping in view 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, the petitioner indulges in any criminal activities, 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

December 19, 2022

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No