

218-A

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

**CRM-M-1851-2023
Date of Decision: 08.08.2023**

Ajay Kumar @ Ajju

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Karandeep Singh, Advocate
for the petitioner.

Mr. M.S. Tiwana, AAG, Punjab.

HARSH BUNGER J.

1. Petitioner (Ajay Kumar @ Ajju) has filed the present petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case bearing FIR No.118 dated 27.09.2022, under Sections 379-B of the Indian Penal Code (Section 473 of the Indian Penal Code, added later on), registered at Police Station Khuian Sarwar, Tehsil Abohar, District Fazilka (Punjab).

2. Custody certificate dated 27.05.2023 of the petitioner filed by learned State counsel is taken on record, subject to all just exceptions.

3. Briefly, the aforesaid case FIR was registered on the complaint of Sandeep Singh s/o Angrez Singh, who stated that he is the owner of Swift Dzire Car bearing registration No.PB-15-X-1505 (colour white). On

26.09.2022, at about 7:00/8:00 P.M., he received a phone call from mobile

No.6280061640 of a known person, namely Ravi s/o Titu, who stated that he is in Haridwar along with his car and one of his known persons of Village Sappanwali wanted to go to Rai Singh Nagar to attend a marriage of his relative, accordingly aforesaid Ravi asked the complainant to make a phone call on mobile No.9646355645 and further asked him to go there and he would be paid his expenses. It is alleged that complainant made a phone call from his mobile on the aforesaid number given by Ravi, whereupon the person answering the call said that they had to go to Rai Singh Nagar from Village Sappanwali to attend the marriage of their relative and stated that they will come back by tomorrow night and asked the complainant to reach at bus stand near Village Sappanwali at 9:30 P.M., from where his son would bring the complainant, along with his car, to Village Sappanwali. It is stated that after reaching at the spot, the complainant again made a phone call on the aforesaid number, which was given to him by Ravi, and thereafter, four persons, having four bags along with them, stopped the complainant by giving a signal and said that they had called him. As per the complainant, he recognized three of those four persons, who were stated to be Ravi Soni, Rishab Jakhar and Ajay Kumar @ Ajju (petitioner) and he can identify the fourth person, if brought before him. Further, it is alleged that all the four persons sat in the car of complainant and when they reached near the main road area of Village Giddrawali, one of the said four persons, namely Rishab Jakhar, asked him to stop the car for two minutes as he wanted to go to the washroom. It is alleged that the complainant also got out from the car to go to the washroom, by taking the keys of car in his right hand, however, when the complainant went a little away from his car then Rishab Jakhar snatched the key of car from the hand of complainant and pushed him, whereupon he (complainant) fell down on the ground. Thereafter, all the four persons ran

away along with the car of complainant. As per the complainant, initially he tried to find out his car at his own level but could not find it. It is alleged that mobile phone and wallet of the complainant were lying in his car. It is also alleged that Aadhaar Card, driving license, P.A.N. Card, one A.T.M. Card of Maharashtra Bank and an amount of Rs.4,200/- were present in the wallet of complainant. Original R.C. and other documents are also alleged to be present in the dashboard of the car. As per the complainant, total amount of the material lying in the car was around Rs.5,00,000/-.

4. In the reply dated 28.02.2023 filed on behalf of the State of Punjab in connected case, bearing CRM-M No.6963 of 2023, it is stated that during investigation in this case, one Amit Kumar @ Mitu s/o Lachhman Dass, was also nominated in the FIR in question vide DDR No.25 dated 02.11.2022, on the basis of supplementary statement of complainant Sandeep Singh. It is further stated that the stolen car was recovered in an abandoned condition and the said car is stated to be affixed with fake number plate bearing registration No.DL-80-U-7778, accordingly offence under Section 473 of the Indian Penal Code was added in the present FIR vide DDR No.38 dated 05.10.2022 and the original number plates were recovered from inside the car. It is further mentioned that co-accused Rishab and petitioner Ajay Kumar @ Ajju are in judicial custody and remaining two accused are absconding.

5. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the aforesaid case FIR No.118 dated 27.09.2022 as the complainant is having some monetary dispute with the petitioner. It is contended that the prosecution story is a concocted one as there is an inordinate delay of one day in registration of the instant FIR.

Learned counsel states that the petitioner is in custody for a period of six

months and twenty five days (as on 27.05.2023) and nothing is to be recovered from him. Learned counsel contends that investigation in the case is complete, challan stands presented on 27.12.2022 and even charges have been framed on 02.02.2023, hence trial in the case is likely to take some time to conclude and no useful purpose would be served with further incarceration of the petitioner. It is also submitted that co-accused of the petitioner, namely Amit Kumar @ Mitu, has been granted anticipatory bail by this Court vide order dated 03.03.2023 passed in CRM-M-57957-2022. Learned counsel for the petitioner submits that the petitioner filed an application for grant of regular bail, which was wrongly declined by the Court of Sessions Judge, Fazilka vide order dated 03.01.2023 (Annexure P-2). Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail is made.

6. Per contra, learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence, therefore, it is contended that in case petitioner is released on bail, he might influence the witnesses and also abscond and delay the trial. Learned State counsel submits that the petitioner does not have clean antecedents as he is also involved in another case, being FIR No.128 dated 31.10.2022, registered under Section 25 of the Arms Act, at Police Station Sarwar Khuyian. Accordingly, prayer for dismissal of the instant petition has been made. However, it is not disputed by learned State counsel that the petitioner is in custody for a period of six months and twenty five days (as on 27.05.2023); investigation in the case is complete, challan stands presented and even charges have been framed.

7. Learned counsel for the petitioner, in rebuttal, has relied upon

the judgment of Hon'ble Supreme Court in *Maulana Mohd. Amir Rashadi v. State of U.P. and another, 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 herein below :-

“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.”

8. Learned counsel for the petitioner reiterates that petitioner be extended the concession of regular bail.

9. I have heard learned counsel for the parties and perused the paper book as well as the custody certificate of petitioner.

10. In the instant case, the petitioner has *inter alia* alleged that he along with the other co-accused had snatched the car of complainant (Swift Dzire). It is also alleged that the total amount of material lying in the car, like complainant's phone, wallet containing an amount of Rs.4,200/-, Aadhaar Card, Driving License, P.A.N. Card and A.T.M. Card, was of around Rs.5,00,000/-. As per the reply filed on behalf of the State, the aforesaid allegedly stolen car was recovered in an abandoned condition. Concededly, the petitioner is in custody for a period of six months and twenty five days (as on 27.05.2023); investigation in the case is complete, challan stands presented on 27.12.2022 and even charges have been framed on 02.02.2023 and the trial is going on, which is likely to take some time to

conclude. Further, co-accused of the petitioner, namely Amit Kumar @ Mitu, has been granted anticipatory bail by this Court vide order dated 03.03.2023 passed in CRM-M-57957-2022.

11. So far as the apprehension expressed by learned State counsel that the witnesses could be influenced by the petitioner, suffice it to state that in the event of any such conduct, the prosecution can always approach the competent Court for cancellation of bail. Accordingly, it is observed that the State/Prosecuting Agency/State police shall be at liberty to observe the behaviour of the petitioner during the bail period, and in case it feels that the petitioner is indulging in influencing any of the witnesses or tampering with the prosecution evidence in any manner or otherwise causing interference with the progress of trial, it shall be open for the State/Prosecuting Agency/State police to move to the trial Court for cancellation of the bail, which shall be decided by the trial Court on merits.

12. Keeping in view the aforementioned circumstances, the present petition is allowed and the petitioner is ordered to be released on regular bail (if not required in any other case), subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The petitioner shall also appear before the concerned Police Station/Station House Officer on first Monday

of every month till the conclusion of trial.

13. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.25,000/- and submit the same with the trial Court. The same would be liable to be forfeited as per law, in case the petitioner remains absent from trial without any sufficient cause.

14. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

15. The petition is accordingly disposed of.

16. All pending application(s), if any, shall also stand closed.

08.08.2023

Apurva

(HARSH BUNGER)

JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No