

216-2

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

**CRM-M-3238-2023 (O&M)
Date of Decision: 28.08.2023**

Mohd. Jamahir

..... Petitioner

Versus

State of Haryana

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Ms. Veena Hooda, Advocate
for the petitioner.

Mr. Ram Kumar Singla, DAG, Haryana.

HARSH BUNGER J.

1. Petitioner (Mohd. Jamahir) has filed the present petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case bearing FIR No.817 dated 23.05.2022, under Sections 379-A, 511 read with Section 34 of the Indian Penal Code (Sections 395 and 120 of the Indian Penal Code, added later on), registered at Police Station Shivaji Nagar, District Gurugram.

2. Upon issuance of notice, status report by way of affidavit dated 27.02.2023 of Mr. Manoj Kumar, H.P.S., Assistant Commissioner of Police, City, Gurugram has been filed on behalf of State of Haryana, which is already on record.

3. Briefly, the aforesaid case FIR was registered on the complaint of Ramesh Kumar s/o Suraj Mal, who stated that he is working at Petro Fuels Pump for the last four years and as per his schedule, he collects the money, which was the collection of petrol pump. It is stated that as per his daily routine, the complainant went to petrol pump Shikohpur, from where he collected an amount of Rs.8.65 Lacs and then he went to Village Kherki

Daula, from where he collected an amount of Rs.3.54 Lacs in cash. It is further stated by the complainant that he had put the whole amount in his car bearing registration No.HR-26-DR-0267 (colour black) and he went to deposit the said amount in U.C.O. Bank, Sohna Chowk near Hasish Bakery, Mosami Market, Gurugram. It is alleged that when the complainant reached Mosami Market near the U.C.O. Bank in his car, carrying the total amount of Rs.16,09,000/- in green bags, then 4-5 boys, with muffled faces, came near the complainant, threw red chilli powder in his eyes and tried to snatch away the bag containing money, being carried by the complainant, whereupon he shouted for help and listening to the same, the public started gathering, whereupon, the aforesaid boys fled away from the spot. Accordingly, strict action was sought and the aforesaid case FIR was registered.

4. As per status report, after registration of the present FIR, the matter was investigated, place of occurrence was inspected and a rough site plan was prepared. Thereafter, statements of the witnesses were recorded. It is stated in the status report that footages of the C.C.T.V. cameras installed at the place of occurrence were obtained and examined, whereupon Section 379-A read with Section 34 of the Indian Penal Code were deleted and Section 395 of the Indian Penal Code was added in the instant FIR. It is further mentioned in the status report that during the course of investigation, on 25.05.2022, Amit @ Gorilla s/o Rajeev Kumar, Mohd. Shamsheer Khan s/o Mohd. Rahish, Kolin Khan @ Sonu s/o Kabool Khan, Gulshad @ Raju s/o Kayum and Moshim s/o Mamudeen were apprehended and interrogated. It is further stated that during the course of investigation, sufficient incriminating evidence came against the aforesaid persons and accordingly, they were arrested on 25.05.2022 and their disclosure statements were

recorded, whereupon Section 120-B of the Indian Penal Code was added in the instant FIR. It is also mentioned in the status report that on the basis of disclosure statement of accused Mohd. Shamsheer, Mohd. Jamahir (petitioner) was arrested for the offence in the instant case under Section 120-B of the Indian Penal Code.

5. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the aforesaid case FIR No.817 dated 23.05.2022 on the basis of disclosure statement of co-accused Mohd. Shamsheer. It is further submitted that the petitioner is in custody since 25.05.2022 and nothing is to be recovered from him. Learned counsel for the petitioner contends that the Test Identification Parade of the petitioner was also conducted, however, the complainant refused to identify him.

6. 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 Additional Sessions Judge, Gurugram vide order dated 14.10.2022 (Annexure P-2). Learned counsel contends that the petitioner is not involved in any other case; investigation in this case is complete, challan stands presented and even charges have been framed on 14.10.2022 and total fourteen prosecution witnesses are cited in this case, 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. 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.

7. 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. It is submitted that there is sufficient incriminating evidence available on record against the petitioner. While referring to the status report, learned State counsel has submitted that during police remand, the accused had demarcated the place of occurrence and co-accused Gulshad @ Raju got recovered Auto bearing registration No.HR-55-U-2646, which was used in the crime and the clothes worn by him at the time of incident were also got recovered; accused Kolin Khan got recovered the remaining red chili powder with packet used by them in the crime and also the clothes worn by him at the time of incident and accused Amit @ Gorilla, Mohd. Shamsheer and Maushim also got recovered the clothes worn by them at the time of incident. It is submitted by learned State counsel that the petitioner has committed a crime of serious nature and he is the main accused, who made the plan to loot the bag containing money from the complainant and it was on his directions that the co-accused executed the said plan; and in case petitioner is released on bail, he might influence the witnesses and also abscond and delay the trial. Accordingly, prayer for dismissal of the instant petition has been made.

However, learned State counsel has not disputed the fact that on 30.05.2022, the Test Identification Parade of the petitioner was conducted but the complainant refused to identify him. Further it is also not disputed by learned State that investigation in the case is complete, challan stands presented and even charges have been framed and total fourteen prosecution witnesses are cited in this case and the trial is going on. Learned State counsel has also not disputed the facts that the petitioner was nominated in this case on the basis of disclosure statement of co-accused Mohd. Shamsheer and he is not involved in any other case.

8. I have heard learned counsel for the parties and perused the

paper book as well as the status report filed by learned State counsel.

9. In this case, allegations levelled against the petitioner is that he is the main accused, who had planned the loot of bag containing money from the complainant and on his directions, the co-accused tried to loot the money from complainant, however, learned State counsel has conceded the fact that petitioner was nominated in this case on the basis of disclosure statement of co-accused Mohd. Shamsheer. It is also not disputed that no other case is pending against the petitioner.

10. In the instant case, the petitioner is in custody since 25.05.2022. investigation in this case is complete, challan stands presented and even charges have been framed on 14.10.2022 and total fourteen prosecution witnesses are cited in this case, thus trial is likely to take some time to conclude.

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 Court for cancellation of the bail.

12. Keeping in view the aforementioned circumstances, the present petition is allowed and the petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of the trial

Court/Illaqa 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.

28.08.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No