

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

(212)

CRM-M-5645-2023 (O&M)

Date of decision: - 09.08.2023

Aman**....Petitioner****Versus****State of Haryana****.....Respondent****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Rohit Kataria, Advocate,
for the petitioner.

Ms. Palika Monga, DAG, Haryana.

VIKAS BAHL, J. (ORAL)

1. This is the second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.199 dated 29.04.2021, under Sections 302 and 34 IPC and Section 25 of the Arms Act, 1959, registered at Police Station Meham, District Rohtak.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody since 09.05.2021 and the investigation is complete and challan has been presented and there are 28 prosecution witnesses, out of which, only five have been examined and thus, trial is likely to take time. It is further submitted that the first bail application of the petitioner was withdrawn on 31.05.2022 and thereafter, sufficient period of time has lapsed and yet the trial has not been concluded, thus, the same entitles the petitioner to file the present petition seeking regular bail. It is further

submitted that in the present case, the petitioner was not named in the FIR and even as per the prosecution version, Jai Singh (complainant) and Aman son of Rajbir were the two eye witnesses and one, Sandeep had subsequently arrived at the spot after hearing hue and cry of the complainant. It is submitted that none of the said three witnesses have supported the case of the prosecution. A reference is made to the statement of PW-1 Jai Singh (complainant), who had specifically stated that he had seen the accused persons, who were present in the Court and that they were not the persons who had committed the murder of his son. Reference is also made to the statement of PW-7 Aman son of Rajbir, who had stated in examination-in-chief that he does not know who had committed the murder, as well as the statement of Sandeep son of Dilbagh, who had stated in his examination-in-chief that he did not know who had committed the murder of son of the complainant. It is contended that since the three star witnesses have not supported the case of the prosecution, thus, on the said ground and also keeping in view the length of the custody period of the petitioner, the petitioner deserves the concession of regular bail. Additionally, it is stated that even as per the prosecution case in the challan, it is not the present petitioner who had fired the shots on the deceased.

3. Learned State counsel, on the other hand, has opposed the present petition for grant of regular bail and has submitted that the motorcycle, which was used in the occurrence, had been recovered from the present petitioner and as per the investigation, the petitioner had caught hold of the deceased when the co-accused had fired shots on him

and the petitioner is also involved in three other cases, thus, he does not deserve the concession of regular bail.

4. Learned counsel for the petitioner, in rebuttal to the abovesaid arguments, has stated that the petitioner is on bail in two cases and in the third case, he has already undergone his sentence and 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 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.”

5. This Court has heard the learned counsel for the parties and has perused the paper book.

6. Keeping in view the above said facts and circumstances moreso, the fact that the petitioner has been in custody since 09.05.2021 and out of 28 witnesses, only 5 witnesses have been examined and thus, the trial is likely to take time and also the fact that as per the case of the prosecution, there are three star witnesses, two being the eye witnesses i.e., Jai Singh (complainant) and Aman son of Rajbir and also, one Sandeep son of Dilbagh, who is stated to have arrived at the place of

occurrence immediately after the occurrence had taken place and all the said three witnesses have been examined and have not supported the case of the prosecution and Jai Singh (complainant), in his examination-in-chief, had stated that he had seen the accused persons in Court and that they were not the persons who had committed the murder of the deceased and also in view of the law laid down in **Maulana Mohd. Amir Rashadi 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.

7. 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.

8. 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.

9. Pending application(s), if any, stand disposed of in view of the above.

August 09, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes