

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-6400-2023

Date of decision : 07.07.2023

Sapanpreet Singh

... Petitioner

Versus

State of U. T. Chandigarh

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Anil Sharma, Advocate
for the petitioner.

Mr.Ankur Bali, Addl.P.P.
for U. T. Chandigarh.

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.82 dated 30.04.2022 registered under Sections 279, 337 IPC (Section 304(1) IPC added later on and charges framed under Section 304 IPC) at Police Station Sector 17, Chandigarh.

2. Learned counsel for the petitioner has submitted that the petitioner has been in custody since 01.05.2022 and the investigation is complete and the challan has already been presented and out of 24 witnesses, only 4 witnesses have been examined and thus, the trial is likely to take time. It is further submitted that the present case was registered on the statement of Mani Khosla complainant, who was an eye witness and the said complainant has been examined and he has not supported the case of

the prosecution and has been declared hostile. Learned counsel for the petitioner has further referred to the MLR of the deceased dated 30.04.2022 (Annexure P-3) to highlight the fact that it has been specifically recorded that breath of the deceased smelled of alcohol at the time of examination. Further reference has been made to the post-mortem report dated 02.05.2022 (Annexure P-4) in which, in the column with respect to the details given qua information provided by the police, it has been stated that as per the Investigating Officer, the case has been alleged to be of road side accident which had taken place on 29.04.2022 near Hotel Sunbeam back side Sector 22, Chandigarh when the deceased was under the influence of alcohol and was walking by the side of road and was suddenly hit by a car from the front side. It is further submitted that initially no offence under Section 304 IPC was mentioned in the FIR and the same has been subsequently wrongly added. It is also submitted that PW-2 Manthan, who is stated to be an eye witness, has, after recording his examination-in-chief gone abroad and has not been produced by the prosecution for cross-examination on 06.05.2023, 17.05.2023 and even on the previous date and thus the trial is likely to take time to conclude. Learned counsel for the petitioner has submitted that the previous bail application of the petitioner was withdrawn at that stage on 14.10.2022 and even thereafter sufficient time has lapsed so as to entitle the present petitioner to file the present second regular bail petition.

3. Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the petitioner is involved in one more case under the NDPS Act. It is further submitted that there is CCTV footage recording of the occurrence and even as per the

CCTV footage, it was the petitioner, who had driven his car of make BMW over the deceased and thus, the offence under Section 304 IPC is prima facie made out and has prayed for dismissal of the present bail petition.

4. Learned counsel for the petitioner, in rebuttal, has submitted that the petitioner has already been granted regular bail in the other case 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 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 another case. 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.”

It is further submitted that the admissibility and evidentiary value of the CCTV footage is to be determined during the course of trial. It is stated that even a perusal of the said footage would show that the deceased, who had consumed liquor along with his friends, was standing in front of the car and was threatening the occupant of the car, who, as per the prosecution case, is the petitioner. It is further stated that there is no previous enmity between the parties.

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

6. The petitioner has been in custody since 01.05.2022 and the

investigation is complete and the challan has already been presented and there are 24 witnesses, out of which, only 4 witnesses have been examined and thus, the trial is likely to take time. The complainant Mani Khosla has been examined as PW-1 and he has not supported the case of the prosecution and has been declared hostile. PW-2 Manthan, who is also stated to be an eye witness, is stated to have gone abroad after his examination-in-chief and had neither appeared before the trial Court on 06.05.2023 nor on 17.05.2023 and thus, the trial is likely to be further delayed. A perusal of the MLR dated 30.04.2022 (Annexure P-3) would show that the breath of the deceased was smelling of alcohol at the time of examination. Relevant portion of the MLR is reproduced hereinbelow:-

“Breath smell of alcohol present at the time of examination. Unconscious to time, place and person. No history of ent bleed, vomiting, loc and seizure. BP 180/100 mmhg. General condition sick, spo2 99 percent in room air.”

The post-mortem report dated 02.05.2022 (Annexure P-4) has also been referred to by learned counsel for the petitioner. Relevant portion of the said report is reproduced hereinbelow:-

“As per information provided by police.

As per IO, alleged history of road side accident on 29.04.2022 at about 11.35 pm near Hotel Sunbeam back side Sector 22, Chandigarh when the deceased was under influence of alcohol and walking by the side of road and suddenly hit by a car from front side. First he was taken to Government Multi Speciality hospital Sector 16, Chandigarh and from where he was referred to PGIMER, Chandigarh.”

A perusal of the said report would show that as per the Investigating Officer, the case was of a road side accident which had taken place when the deceased was under the influence of the alcohol and was suddenly hit by a car from the front side. It is the case of the petitioner that

anything on record to suggest the same. The admissibility, relevance and evidentiary value of the CCTV footage would be considered during the course of trial and pleas of the parties with respect to the details of the incident would also be considered during the course of trial. Any observation made by this Court would prejudice the case of either of the parties.

7. Keeping in view the above said facts and circumstances and also the custody period of the petitioner and in view of the law laid down by the Supreme Court 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.

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.

(VIKAS BAHL)
JUDGE

July 07, 2023
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No