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

CRM-M-9363-2023

Date of decision : 13.04.2023

Ginni

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ankit Chahal, Advocate for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

1. This is the fourth petition filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in FIR No.300 dated 06.10.2019 registered under Sections 148, 149, 307, 323, 324 and 506 of the Indian Penal Code, 1860 and Sections 25, 54 and 59 of the Arms Act (to which Sections 212 and 302 of IPC have been added and Sections 25, 54 and 59 of the Arms Act, have been deleted later on) at Police Station Gohana Sadar, District Sonipat.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody since 06.10.2019 and the previous bail application of the petitioner was dismissed as withdrawn on 20.12.2022 at that stage and the trial Court was directed to expedite the trial and to conclude the same as

expeditiously as possible. It is further submitted that on 23.03.2023, an application under Section 311 Cr.P.C. was moved by the PP for recalling witness-Dr. Jitender Kumar Jakhar, Professor Department and Forensic Medicine, PGIMS, Rohtak and the case has now been adjourned to 12.05.2023 by the trial Court for filing of reply to the application under Section 311 Cr.P.C. It is contended that in view of the same, the trial is likely to be further delayed.

3. Learned counsel for the petitioner has submitted that in the present case, there were four eye-witnesses including, the complainant/injured and all the said four eye-witnesses have been examined as PW1 to PW4 and they have not supported the case of the prosecution and had deposed in their examination-in-chief that the petitioner and the other co-accused persons were not the persons who had inflicted injuries on the complainant and the deceased and rather, the injuries were caused by unknown persons. It is contended that even PW6-Rohtash, who had identified the dead body, has also turned hostile and reference has been made to their statements which have been annexed as Annexure P-1 (Colly). It is further contended that co-accused of the petitioner namely Bhola @ Parveen, Deepak, as well as Sagar have been granted the concession of regular bail by a Coordinate Bench of this Court vide orders dated 14.01.2022 and 11.05.2022 (Annexures P-5 and P-6).

4. On the other hand, learned State Counsel has opposed the present petition for grant of regular bail to the petitioner and has submitted that as per the FIR, the petitioner is the main accused who had inflicted injuries, on account of which, the deceased had died. The recovery of knife

has also been effected from the present petitioner. It is further contended that the petitioner is involved in three other cases and is a habitual offender.

5. Learned counsel for the petitioner has submitted that the petitioner is on bail in all the abovesaid cases 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 another case. 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.”

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

7. Keeping in view the abovesaid facts and circumstances more so the facts that the petitioner is in custody since 06.10.2019 and also the fact that all the eye-witnesses including complainant/injured have been examined as PW1 to PW4 and have turned hostile as they have not supported the case of the prosecution and have submitted that it was not the present petitioner and the other accused persons who had caused injuries to them or to the deceased and the said injuries were caused by unknown persons and even PW6-Rohtash, who had identified the dead body, has also

been declared hostile and also the fact that the State has moved an application under Section 311 Cr.P.C. on 23.03.2023 on account of which, the case has been adjourned to 12.05.2023 and thus, the conclusion of trial is likely to take time and also in view of the law laid down in ***Maulana Mohd. Amir Rashadi's case*** (Supra), the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to him not being required in any other case.

8. However, it is made clear that in case, any act is done by the petitioner to threaten 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.

9. Nothing stated above shall be construed as an 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 application.

13.04.2023*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**