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

CRM-M-18516-2023

Date of decision : 10.05.2023

Gaurav @ Tund @ Gopi

...Petitioner

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**

Present: Mr. Harinder Singh Aujla, Advocate for the petitioner.

Mr. Rohit Ahuja, DAG, Punjab.

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**VIKAS BAHL, J. (ORAL)**

1. This is the second petition filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in FIR No.55 dated 08.02.2022 registered under Section 379-B of Indian Penal Code, 1860 (Section 411 of IPC has been added later on) at Police Station B Division, District Amritsar.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody since 26.08.2022 and there are 14 prosecution witnesses, out of which, none have been examined as yet and even charges have not been framed. It is further submitted that earlier bail application filed by the petitioner was withdrawn at that stage on

02.12.2022 and even thereafter, no progress has been made in the trial. It is contended that the petitioner was not named in the FIR and was subsequently named as an accused in the supplementary statement made by the complainant which was recorded on 20.08.2022 i.e. after a delay of more than 6 ½ months from the date of occurrence i.e. 08.02.2022. It is further contended that in the present case, investigation is over and recovery which was sought to be effected has already been effected and thus, no useful purpose would be served by keeping the petitioner in further incarceration. It is argued that the petitioner in order to show his bona fide, is ready to deposit an amount of Rs.20,000/- with the trial Court within a period of one month from today without admitting his guilt and he has no objection in case, the said amount is released to the complainant.

3. On the other hand, learned State Counsel has opposed the present petition for grant of regular bail to the petitioner and has submitted that recovery of mobile phone of the complainant has been effected from the present petitioner and even the motorcycle on which the petitioner along with co-accused were present during the alleged occurrence has been recovered from the present petitioner. It is further submitted that the gold ornaments have not been recovered as yet. It is contended that the petitioner is involved in one more case under the NDPS Act.

4. Learned counsel for the petitioner, in rebuttal to the said argument, 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.”*

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

6. Keeping in view the abovesaid facts and circumstances more so, the facts that the petitioner is in custody since 26.08.2022 and the investigation is complete and the challan has been presented and out of 14 prosecution witnesses, none have been examined as yet and even charges have not been framed and thus, the conclusion of the trial is likely to take time and also the fact that the petitioner was not named in the FIR dated 08.02.2022 and was subsequently named in the supplementary statement of the complainant which was recorded on 20.08.2022 i.e. after a delay of more than 6½ months and also in view of law laid down in ***Maulana Mohd. Amir Rashadi’s*** case (Supra), the 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 concerned trial Court/Duty Magistrate, subject to him not being required in any other case and subject to the petitioner depositing an amount of Rs.20,000/- with the trial Court within a period of one month from today and the trial Court is directed to release the said amount to the complainant. The deposit of the said amount of Rs.20,000/- would not be construed as an admission of guilt by the petitioner.

7. It is, however, clarified that in case, the abovesaid conditions are not complied with within the stipulated period, then the present petition would be deemed to have been dismissed.

8. 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.

**10.05.2023***Pawan***(VIKAS BAHL)  
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**