

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

(216)

CRM-M-19428-2023

Date of decision: - 26.04.2023

Shamsher Singh @ Sherry**....Petitioner****Versus****State of Punjab****.....Respondent****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Munish Puri, Advocate
for the petitioner.

Mr. Rohit Ahuja, DAG, Punjab.

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.256 dated 26.09.2021, registered under Sections 395 IPC (Sections 120-B and 212 have been added later on) and Sections 25 & 27 of the Arms Act, at Police Station Division B, District Police Commissionerate, Amritsar.

2. Learned counsel for the petitioner has submitted that the petitioner has been in custody since 09.10.2021 and out of 16 witnesses, only 2 witnesses have been examined and thus, the trial is likely to take time. It is further submitted that the first bail application of the petitioner was dismissed as withdrawn at that stage on 02.06.2022 and thereafter, sufficient time has elapsed but the trial has not been concluded. It is also

submitted that the petitioner was not named in the FIR and in the present case, there are 3 eye witnesses, out of which, 2 eye witnesses i.e., PW1 Davinder Singh (complainant) and PW2 Wazir Singh have been examined on 17.02.2023 and both the said witnesses had stated that the petitioner and the other co-accused were not the persons who had looted the cash amount and gold chain from the complainant.

3. Learned State counsel, on the other hand, has opposed the present petition for grant of regular bail and has submitted that in the present case, recovery of one pistol, 5 live catridges, Rs.40,000/- cash and one motorcycle, has been effected from the petitioner and the petitioner is involved in one another case.

4. Learned counsel for the petitioner, in rebuttal to the abovesaid arguments, 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 09.10.2021 and out of 16 witnesses, only 2 witnesses have been examined and thus, the trial is likely to take time and the two star witnesses i.e., PW1 Davinder Singh (complainant) and PW2 Wazir Singh had specifically stated that it is not the petitioner who had committed the alleged offence 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.

April 26, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No