

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(209)

CRM-M-21294-2022 (O&M)

Date of decision: - 11.04.2023

Ajay

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Ms. Kamlesh, Advocate
for Mr. Parminder Singh, Advocate
for the petitioner.

Mr. Rohit Ahuja, DAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is the second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.96 dated 16.03.2021, registered under Sections 379-B, 201 and 413 IPC, at Police Station City Kharar, Mohali District SAS Nagar.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 07.05.2021 and the earlier bail application of the petitioner was withdrawn on 24.02.2022 on account of the fact that neither the complainant-Chetan Sharma nor the alleged eye witness Mithun had been examined and liberty was sought to file a fresh petition after the examination of the said witnesses. It is further submitted that the said two witnesses have now been examined on 10.02.2023 and

04.02.2023 respectively. It is further submitted that inadvertently when the petition was filed, it was stated to be the first petition and thus, an application bearing CRM-25416-2022 was moved for amendment of the bail application and now in the said amended petition, it has been specifically stated that the present petition is the second petition for regular bail and even order dated 24.02.2022 passed by this Court in the earlier petition has been annexed as Annexure P-4. Learned counsel for the petitioner has prayed that the application for amendment of the bail application be allowed and the pleas raised in the said amended bail application be considered for the purpose of adjudicating the present case. It is stated that in the present case, the petitioner was not named in the FIR and no recovery has been effected from him and the prayer for bail has been made on the basis of the above-said facts and also on the basis of length of custody period undergone by the petitioner.

On the other hand, learned State counsel, on instructions from ASI Pavitter Pal Singh, has opposed the present petition for regular bail and has submitted that the petitioner is a habitual offender and is involved in several other cases. It is further submitted that the petitioner is not on bail in some of the other cases. It is also submitted that the trial is at its fag end as only two witnesses remain to be examined. It is stated that although, the petitioner was not named in the FIR, but during the course of investigation, in another FIR i.e., FIR No.98 dated 18.03.2021, the petitioner suffered a disclosure statement regarding his involvement in the present case.

Learned counsel for the petitioner, in rebuttal, 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 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.”

Learned counsel for the petitioner has submitted that since in pursuance of the said disclosure statement, no recovery has been made from the present petitioner, thus, the question as to whether the said disclosure statement which is made in police custody can be used against the petitioner or not, would be a moot point, which would be decided during the course of trial.

This Court has heard learned counsel for the parties and has gone through the paper-book.

In view of the request made by learned counsel for the petitioner, the application bearing CRM-25416-2022 for amendment of the bail application is allowed and the amended bail application/petition is taken on record.

Keeping in view the above-said facts and circumstances,

more so, the fact that the petitioner has been in custody since 07.05.2021 and also the fact that the petitioner was not named in the FIR and no recovery has been effected from him in the present case 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 directed to be released on regular 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.

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.

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 11, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No