

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

(216)

CRM-M-25217-2023

Date of decision: - 17.10.2023

Devender Kumar @ Parveen @ Sonu

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. J.P. Jangu, Advocate,
for the petitioner.

Ms. Palika Monga, DAG, Haryana.

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.611 dated 20.07.2018, under Sections 392 & 397 IPC and under Section 25 of the Arms Act, 1959, at Police Station Civil Lines, District Karnal.

2. Learned counsel for the petitioner has submitted that the petitioner has been in custody since 06.08.2021 (more than 2 years and 2 months) and the investigation is complete and challan has been presented and there are 40 prosecution witnesses, out of which, only two have been examined and thus, trial is likely to take time. It is further submitted that the first bail application of the petitioner was withdrawn on 01.08.2022

and thereafter, sufficient period of time has lapsed and yet the trial has not been concluded, thus, the same entitles the petitioner to file the present petition seeking regular bail. It is further submitted that in the present case, the petitioner was not named in the FIR and has been implicated on the basis of disclosure statement of co-accused, namely, Kamal @ Kala, and the said Kamal @ Kala has been granted the concession of regular bail by a Co-ordinate Bench of this Court, vide order dated 29.10.2021 passed in CRM-M-16946-2021 (Annexure P-4). It is also submitted that even the other co-accused of the petitioner, namely, Jitender @ Jitu @ Bhanja as well as Shekhar @ Maya have also been granted the concession of regular bail by the Co-ordinate Bench of this Court, vide order dated 15.02.2022 passed in CRM-M-48158-2021 (Annexure P-5) and vide order dated 05.10.2021 passed in CRM-M-22439-2021 (Annexure P-3), respectively and that no weapon has been recovered from the petitioner. It is stated that the two alleged eye witnesses, namely, Amrik Singh and Dharam Dutt, have been examined as PW-1 and PW-2 and both the said two witnesses have not supported the case of the prosecution and had stated that they had seen the boys, but could not identify the accused persons, who were present in Court because on that day the boys came to the office with muffled faces and on the basis of the said statement, it is prayed that the petitioner be released on regular bail.

3. Learned State counsel, on the other hand, has opposed the present petition for grant of regular bail and has submitted that a recovery of Rs.23,000/-, out of the money looted, has been effected from the present petitioner and the present petitioner is a habitual offender,

inasmuch as, the petitioner is involved in several other cases, which have been detailed in paragraph 5 of the reply and thus, he does not deserve the concession of regular bail.

4. Learned counsel for the petitioner, in rebuttal to the abovesaid arguments, has relied upon the judgment of Hon'ble Supreme Court in the case titled ***“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 06.08.2021 (more than 2 years and 2 months) and the investigation is complete and challan has been presented and there are 40 prosecution witnesses, out of which, only two have been examined, thus, trial is likely to take time and that the petitioner was not named in the FIR and has been implicated on the basis of disclosure statement of co-accused, namely, Kamal @ Kala,

who has been granted the concession of regular bail by the Co-ordinate Bench of this Court, vide order dated 29.10.2021 passed in CRM-M-16946-2021 (Annexure P-4) and also the fact that the other co-accused of the petitioner, namely, Jitender @ Jitu @ Bhanja as well as Shekhar @ Maya have also been granted the concession of regular bail by the Co-ordinate Bench of this Court, vide order dated 15.02.2022 passed in CRM-M-48158-2021 and vide order dated 05.10.2021 passed in CRM-M-22439-2021, respectively and also the fact that no weapon has been recovered from the petitioner and two eye witnesses, namely, Amrik Singh and Dharam Dutt who have been examined as PW-1 and PW-2 in the present case, have made the statement that even though they had seen the boys, but could not identify the accused persons, who were present in Court because on that day the boys came to the office with muffled faces and also in view of the law down in **Maulana Mohd. Amir Rashadi'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, subject to him not being required in any other case.

7. However, it is made clear that in case, the petitioner indulges in criminal activities in the future or if 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.

October 17, 2023
naresh.k

(VIKAS BAHL)
JUDGE

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