

**106+211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-276-2023 in/and
CRM-M-36456-2022
Date of decision: 06.01.2023

Gurdeep Kumar @ DeepuPetitioner

versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. S.S. Sidhu, Advocate
for the applicant/petitioner.

Mr. Anup Singh, AAG, Punjab.

NAMIT KUMAR, J.

CRM-276-2023

This application has been filed under Section 482 Cr.P.C. with a prayer to add offences under Sections 411 and 201 of IPC (added later on by the investigating agency) in a case bearing FIR No.88 dated 27.05.2022 initially registered under Section 379-B of IPC registered at Police Station Kotwali, District Bathinda.

Notice of the application.

Mr. Anup Singh, AAG, Punjab puts in appearance and accepts notice on behalf of the respondent-State.

In view of the averments made in the application, the present application is allowed and offences under Sections 411 and 201 of IPC (added later on by the investigating agency) are added in the above mentioned FIR.

CRM stands disposed off.

Registry is directed to do the needful.

CRM-M-36456-2022

This petition has been filed under Section 439 Cr.P.C. seeking regular bail in a case bearing FIR No.88 dated 27.05.2022 registered under Sections 379-B/411/201 of IPC registered at Police Station Kotwali, District Bathinda.

The FIR in the present case has been registered on the statement suffered by the complainant-Jasvir Kaur, *inter alia* alleging that she is working as an E.T.T. Teacher and her duty is at the Primary School, Lal Singh Basti, Bathinda. At around 06:00 P.M., she along with her husband left her house to Mall Road, Bathinda to buy household goods and when they reached near Nagpal Hospital, in front of Lenskart Shop, her husband went inside the shop to buy spectacles and she was standing outside the shop waiting for her husband. Then at around 07:15 P.M.; one person on motorcycle came from 'Gole Diggi' side who had covered his face with a cloth and brought the motorcycle near her and snatched gold chain weighing 1 ½ tola from her neck. She further stated that she and her husband are 65% handicapped due to which they could not chase the accused. They raised hue and cry and people chased him and his motorcycle stopped at Bikaner Laboratory, Birla Mill Colony and he abandoned his motorcycle at the spot and ran towards Goniana Road. It is further alleged that she along with her husband reached there and found the motorcycle which was without a number plate. The motorcycle used in the occurrence was found to be stolen.

Learned counsel for the petitioner contends that the petitioner is innocent and has been falsely implicated in the present case. He was not named in the FIR and has been nominated as an accused on the basis of

supplementary statement dated 13.06.2022 (Annexure R-1) made by complainant-Jasvir Kaur and while the complainant has been examined before the learned trial Court as PW-1, she has stated that after lodging of FIR at the place of occurrence, she never visited the police and she had only given photographs of her chain and it is the police who has told the name of the accused (present petitioner) to her and police got test identification parade on 14.06.2022 and on the same day, police told the name of the accused/petitioner as Gurdeep Singh. He further submits that the petitioner was arrested on 13.06.2022 on the basis of supplementary statement of the complainant (Annexure R-1) and has further referred to para 3 of the charge dated 27.10.2022 framed against him and the same reads as under:-

“Secondly, on 16.06.2022; in the area of village Mehma Sarkari, District Bathinda, you the above named accused sold the snatched chain of complainant Jasvir Kaur for Rs.30,000/- and spend Rs.8,000/- from the said amount and you dishonestly retained stolen property i.e. Remaining amount of Rs.22,000/- and one motorcycle belonging to Sukhjot Singh, knowing or having reason to believe that abovesaid property was stolen property and thereby you accused committed an offence punishable under Section 411 IPC and within my cognizance.”

He submits that the petitioner was arrested on 13.06.2022, whereas, in the charge framed against him, it has been stated that on 16.06.2022, the petitioner sold the snatched chain of the complainant-Jasvir Kaur for Rs.30,000/-. He further submits that there is material contradiction in the prosecution story and the petitioner has been framed in the present case. He further submits that investigation in the present case has been completed and nothing is to be recovered from the petitioner and material witness, namely, Jasvir Kaur-complainant has already been examined, who has not supported the prosecution version and the case is

now fixed for prosecution evidence on 18.01.2023 and he is already in custody for the last about seven months and no fruitful purpose would be served in detaining the petitioner further in the police custody.

Per contra, the learned State counsel opposed the grant of bail to the petitioner but could not refute the assertions made by learned counsel for the petitioner. However, he submits that the petitioner is involved in other two cases, although he is on bail in those cases.

Learned counsel for the petitioner submits that the petitioner cannot be denied the concession of bail merely on account of pendency of other two cases and has referred to the judgment rendered by the Hon'ble Supreme Court of India in 'Prabhakar Tewari Vs. State of U.P. and Another', 2020 (1) R.C.R. (Criminal) 831.

To the same effect is the judgment of the Hon'ble Apex Court in 'Maulana Mohd. Amir Rashadi Vs. State of U.P. and Another', 2012 (2) SCC 382, wherein it has been held as under: -

“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.”

The custody of the petitioner in present case is about 07 months; *prima facie* the prosecution story seems to be contradictory and the fact that the complainant has not named the petitioner as per her statement dated 22.12.2022 given in the Court; the investigation is complete, challan has been presented, charges have been framed and material witness has already been examined.

Heard counsel of both the parties and perused the records.

Keeping in view the period of incarceration and since the challan has already been presented against the petitioner charges have been framed and material witness has already been examined and the likelihood of trial being prolonged, the present petition is allowed. Culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detaining the accused/petitioner. Thus, without commenting upon the merits of the case, the petitioner is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

The petition stands disposed off accordingly.

However, nothing stated hereinbefore shall be construed as an expression of opinion *qua* the merits of the present case.

06.01.2023
Neha

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No