

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
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CRM-M-34450-2023
Date of Decision: 24th July, 2023

Surender alias Chango ... Petitioner
Versus
State of Haryana ... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Shivam Gaur, Advocate for the petitioner.
Mr. Rajiv Sidhu, Deputy Advocate General, Haryana.

AVNEESH JHINGAN , J.(Oral)

1. This petition under Section 439 Cr.P.C. is filed seeking regular bail in FIR mentioned below :-

FIR No.	Date	Police Station	Sections
402	17.8.2020	Surajkund, District Faridabad	458/395/397 IPC, 1860 and 27 of Arms Act, 1959

2. Learned counsel for the petitioner submits that co-accused Manoj was granted bail by this Court, he claims parity with co-accused Ankit alias Akki who was granted bail by Addl. Sessions Judge on 17.7.2023 in CNR No. HRFB01-008309-2023.

3. On 17.7.2023, the following order was passed :-

This order of mine shall dispose of an application for grant of regular bail, moved by the petitioner/accused – Ankit alias Akki on the averments that this is the second bail application of the petitioner and his first bail application was dismissed by the Court of Sh. Amrit Singh, Id. Addl. Sessions Judge Faridabad vide order dated 05.05.2022. It is submitted that name of the petitioner is not mentioned in the alleged FIR and none of the eye witness has deposed against the petitioner. It is further submitted that a false disclosure has been prepared by the police against the petitioner, whereas no

recovery has been effected from him. Further more, he has not been identified by the complainant. It is also alleged that co-accused Manoj has already been released on bail by the Hon'ble High Court vide order dated 04.07.2023. Besides this, it is submitted that nothing is to be recovered from the possession of petitioner and trial of the case will take long time for its completion. Thus, no useful purpose would be served by detaining the petitioner in custody. Hence, this bail application.

2. *Reply to the bail application was filed by the State whereby prayer for grant of bail has been opposed.*

3. *Brief facts of this case, which are relevant for the disposal of present bail application are that the present case was registered on the complaint of Goldi Rajeev Sayoji, who had alleged that he was resident of A-2617 Green Field Colony, Faridabad and a retired person from a private company. He was residing in the house along with his family. On 16.08.2020 at about 8.15 p.m. when he along with his friend Hemant Kirola, mother - Smt. Kalara Sayoji, nephews - Mark, Abhijit, Shaukin, Ishan Pant and three other servants was present in his house, two persons entered in his house after opening the door, one of them shown a pistol to them and thereafter, they started gathering remaining persons. In the meanwhile, two more persons entered into his house and after confining them in a room, making enquiry about gold ornaments and cash amount, one of them, gave a slap blow to him and threatened him as well. Thereafter, all the persons searched his entire house, taken two gold 'Kada', one gold chain, two mobile phones (I Phone and Samsung) and computer hard disk and went away in a vehicle Fiat Punto bearing registration No. HR-51BN-2617 of his nephews Ishan and Mark and boarded down in front of Lack-wood City. Accordingly, on the basis of these facts, FIR in question was registered and law was set into motion.*

4. *I have heard the rival contentions advanced by learned counsel for the parties and gone through the record carefully.*

5. *It has been argued by ld. Counsel for the petitioner that the accused – Ankit alias Akki has been falsely implicated, whereas his name has not been mentioned in the alleged FIR. He further contended that coaccused Manoj has already been granted the concession of bail by the Hon'ble High Court vide order dated 04.07.2023 and case of the petitioner is on similar footings. He further pointed out that petitioner has been confined in custody since 21.10.2020, whereas no useful purpose is going to be served by detaining him further in custody. With these submissions, he prayed*

for acceptance of present bail application.

On the other hand, Id. Public Prosecutor for State has opposed the bail application on the ground that the petitioner along with co-accused had actively participated in the offence in question and they looted gold ornaments as well as mobile phones etc. from the house of complainant on gun point. Accordingly, dismissal of the present bail application has been prayed for.

6. *To deal with application in hand, it is worth mentioning here that our Hon'ble High Court in CRM-M-47417 of 2023, tiled as Manoj Kumar vs. State of Haryana, vide order dated 04.07.2023, has allowed concession of regular bail to the co-accused – Manoj and the relevant paras No.3 to 7 of the said order are reproduced as under:-*

““3. Learned counsel for the petitioner submits that the petitioner was not named in the FIR, he was nominated on the basis of a disclosure statement and no recovery was made from him. It is further argued that the complainant has not identified the petitioner and he is not involved in any other case. The contention is that petitioner has falsely been implicated being relative of co-accused Manjit.

4. *Learned State counsel opposes the prayer for grant of regular bail and submits that petitioner was specifically named by co-accused Manjit, his relative. He on instructions fairly submits that no recovery was made from the petitioner and he is not involved in any other case.*

5. *It is clarified that observations made hereinafter shall not be construed as an expression of opinion on the merits of the case.*

6. *Having conspectus of facts and considering that the name of the petitioner surfaced in a disclosure statement; no recovery was made from the petitioner, he has no criminal antecedents; he is in custody since 20th August, 2020 and that conclusion of trial is likely to take time, the petitioner is granted bail subject to his furnishing bail bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.*

7. *The petition is allowed.””*

It is fairly settled in law that rule of consistency requires that if a co-accused has been granted bail by the Superior Court and the case against the applicant before the Court is similar and identical, he should be granted bail, even if his earlier bail was dismissed.

Reliance in this regard can be placed on the observations made in Sharad Kumar vs. CBI 2012(1) RCR(Cr.) 56 (Delhi). In the case in hand it is evident on record that the accused – Ankit alias Akki was not named in FIR and he was also nominated on the basis of disclosure statement of co-accused and only a recovery of mobile phone was effected from him, whereas conclusion of trial in near future does not appear in sight. Infact, the material witnesses have already been examined by the prosecution. Therefore, principle of parity is applicable to the case of the applicant, who continues to be in custody since 22.10.2020 especially when further incarceration of the petitioner/accused – Ankit alias Akki will not serve any purpose.

7. *Consequently, keeping in view the facts and circumstances detailed above and without commenting upon merits of the case, the application is allowed. The petitioner/accused – Ankit alias Akki is hereby admitted to bail on his furnishing personal bonds in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of Id. Illaqa/Duty Magistrate. A copy of this order be sent to the concerned Court for compliance. Bail application file be tagged with the main file.”*

4. Learned counsel for the State though opposes the prayer for grant of bail, he is not in a position to distinguish the case of the petitioner qua the co-accused so far as grant of bail is concerned.

5. Without commenting on the merits of the case, considering the allegations, on the basis of parity of petitioner vis-a-vis co-accused so far as grant of bail is concerned and though the investigation is complete conclusion of trial is likely to take time, the petitioner is granted bail subject to his furnishing bail bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

6. The petition is allowed.

7. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

8. Since the main case has been allowed the pending application(s), if any is rendered infructuous.

(AVNEESH JHINGAN)
JUDGE

24th July, 2023

anuradha

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No