

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

236

CRM-M-36518-2023 (O&M)

Date of decision: 06.09.2023

Sushank @ Kittu

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Abhinav Sood, Advocate for the petitioner

Mr. B.S. Virk, Sr. DAG Haryana

AMAN CHAUDHARY. J.

1. Prayer in the present petition filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in case FIR No.466 dated 20.06.2021, registered under Sections 302, 384, 379-B, 34 and 506 IPC and Section 25 of Arms Act, at Police Station Camp Palwal, District Palwal.

2. Learned counsel contends that the petitioner is in custody for 2 years and about 3 months. Though, he was named in the FIR along with the co-accused, however, the allegations as regards the firing of shots at the deceased, which was fatal are against the co-accused Shyam Thakur. All material witnesses including the complainant have been examined, but they have not supported the prosecution version. 15 more prosecution witnesses remain to be examined. There are two more FIRs pending against the petitioner, in one of which, he is on bail. Reliance is placed on the judgment of Hon'ble The Supreme Court in **Maulana Mohd. Amir Rashadi vs. State of U.P. and others**, 2012(2) SCC 382.

3. The custody certificate dated 05.09.2023 has been filed by learned State counsel. As per the same, the petitioner is behind bars for the last 2 years, 2 months and 15 days.

4. Learned State counsel opposes the bail on the ground that the petitioner had actively participated in the commission of offence and a motorcycle has been recovered from him. He is however unable to controvert the submissions with regard to stage of the case, private witnesses have not supported the prosecution version and the petitioner is on bail in one case.

5. Heard.

6. Hon'ble The Supreme Court in the case of **Maulana Mohd. Amir Rashadi** (Supra) had held that, "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." Reiterating in **Prabhakar Tewari vs. State of UP and another**, (2020) 11 SCC 648, it was observed that, "The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail."

7. Considering the facts and circumstances of the case, in particular that the petitioner is in custody for 2 years, 2 months and 15 days; on bail in another case; charges were framed on 22.11.2021, however, out of the 26 prosecution witnesses 11 (including all material witnesses) have been examined so far, the trial is likely to take a considerable time, thus his further incarceration would not serve

any useful purpose, the present petition for grant of regular bail deserves to be allowed.

8. As a result, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to his not being required in any other case. The petitioner shall abide by the following conditions:-

- (i) The petitioner will not tamper with the evidence during the trial.
- (ii) The petitioner will not pressurize/ intimidate the prosecution witnesses.
- (iii) The petitioner will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.
- (iv) The petitioner shall not commit an offence similar to the offence of which, he is an accused, or for commission of which he is suspected of.
- (v) The petitioner shall not directly or indirectly coerce, induce, threaten or promise to any person acquainted with the facts of the case so as to dissuade him/ her from disclosing such facts to the Court or to any police officer or tamper with the evidence in any manner.
- (vi) The petitioner shall not in any manner misuse his liberty.
- (vii) The petitioner shall furnish his address and mobile number to the Trial Court forthwith and shall not change the same till the conclusion of the trial and in case for any reason, the petitioner seeks to change any of the aforesaid, the same shall be done only with prior intimation to the learned Trial Court, stating the reason for the same.
- (viii) The petitioner shall not leave the country without prior permission of the trial Court.
- (ix) The trial Court/Duty Magistrate may impose any other condition, as deemed appropriate while releasing the petitioner.

9. It is made abundantly clear that in case there is any breach of the aforesaid conditions, the State shall be at liberty to seek cancellation of bail as

granted to the petitioner by this order.

10. In view of the above, it is clarified that the observations made herein are limited for the purpose of present proceedings and would not be construed as an opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

(AMAN CHAUDHARY)
JUDGE

September 06, 2023
M.Kamra

Whether speaking/reasoned

:

Yes / No

Whether reportable

:

Yes / No