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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-37406-2023 (O&M)****Date of decision: November 14, 2023**

Varinder Pal Singh @ Vicky

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**Present:-** Mr. Jasraj Singh, Advocate for petitioner.

Mr. Kunal Muthreja, AAG Punjab.

VIKAS BAHL, J. (ORAL)**CRM-37557-2023**

For the reasons stated in the application, same is allowed. Copies of orders dated 10.08.2023 and 11.08.2023 (Annexures P-11 and P-12, respectively) are taken on record, subject to all just exceptions.

Main case (O&M)

This is the second petition under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') for grant of regular bail to the petitioner, in FIR No.225 dated 20.09.2021, registered under Section 364-A of the Indian Penal Code, 1860 (for short 'IPC') (Sections 120-B of IPC and Section 25 of the Arms Act, 1959 have been added later on), at Police Station Model Town, District Hoshiarpur.

2. Learned counsel for petitioner has submitted that petitioner has been in custody since 20.09.2021 (more than 02 years and 01 month) and there are total 19 witnesses, out of which none has been examined as yet, and thus, the conclusion of the trial is likely to take time. It is further submitted that earlier bail application was dismissed as withdrawn, at that stage, vide order dated

05.05.2022, and even after the said order, sufficient time has elapsed and yet the trial has not made any progress. It is submitted that on 12.10.2023, this Court had directed the State to get the complainant and son of the complainant examined expeditiously, but a perusal of the zimni orders dated 23.10.2023 and 31.10.2023 passed after passing of the said order by this Court, would show that State had not presented any witnesses much less the complainant and son of the complainant. It is submitted that case of the petitioner along with 04 other accused persons was committed to the Court of Sessions on 23.09.2022 and thereafter, State has filed a supplementary challan on 21.11.2022 against three other accused, namely, Makhan Singh, Manpreet Singh @ Mani Raiya and Mandeep Singh @ Toofan and in the said supplementary challan, 27 witnesses have been cited, but none have been examined as yet and the case, in the supplementary challan, was committed to the Court of Sessions on 26.10.2023 and charges have not been framed as yet and the case is now listed for framing of charges with respect to the said three accused persons. It is further submitted that the trial would be delayed further inasmuch as the said two proceedings will have to be clubbed and fresh charges in the trial *qua* the petitioner will have to be framed. It is submitted that the petitioner was not named in the FIR and is not the owner of the Verna car in which son of the complainant, namely, Rajan was stated to be forcibly abducted. It is further submitted that as per the case of the prosecution, the petitioner is not one of the persons who had abducted the said Rajan, son of the complainant, as the said role is attributed to Makhan Singh, Manpreet Singh @ Mani Raiya and Mandeep Singh @ Toofan. It is further argued that Makhan Singh has been granted regular bail by a co-ordinate Bench of this Court vide order dated 10.08.2023 (Annexure P-11) passed in CRM-M-770-2023 and the said order has been rectified on account of factual error, vide order dated 11.08.2023 (Annexure P-12). It is further submitted that Rajan, son of the complainant, as per the prosecution case, was found by the

prosecution unharmed. It is also submitted that other co-accused persons, namely, Amrik Singh, Satwinder Singh @ Satwinder Singh Mahal @ Sonu, and Harpreet Singh @ Happy and Jagjit Singh @ Jagjeet Singh @ Raja have also been granted regular bail by this Court, vide orders dated 21.12.2021 passed in CRM-M-52692-2021, 03.02.2022 passed in CRM-M-1780-2022 and 06.04.2022 passed in CRM-M-2383-2022 & CRM-M-5278-2022 (Annexures P-8 to P-10, respectively); thus, petitioner deserves the concession of regular bail. Learned counsel for the petitioner has further stated that in case, the petitioner is granted the concession of regular bail, then he will not come within a radius of 01 km from where the complainant is residing, i.e., Model Town, Hoshiarpur.

3. Learned State counsel, on the other hand, has opposed the present petition and has submitted that, as per the case of the prosecution, petitioner alongwith one Gurdial Singh had come to collect ransom money and the petitioner was apprehended on the spot, and recovery of one pistol of 32 bore and 03 live cartridges have been made from the present petitioner. It is submitted that petitioner is also involved in three other cases and thus does not deserve concession of bail. It is submitted that Gurdial Singh is yet to be arrested in the present case.

4. Learned counsel for petitioner, in rebuttal, has submitted that the petitioner is on bail in 02 out of the said 03 other cases against him and has relied upon a judgment of the 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 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. It is not in dispute that petitioner is in custody since 20.09.2021 and out of 19 witnesses, none have been examined as yet and thus, trial is likely to take time. On 12.10.2023, this Court had directed the State to get the complainant and son of the complainant examined expeditiously, however, perusal of the zimni orders dated 23.10.2023 and 31.10.2023 passed by learned Court below would show that no prosecution witness was present. The said zimni orders are reproduced herein below:-

Order dated 23.10.2023

“STATE OF PUNJAB VS VARINDERPAL SINGH @ VICKY etc.

*Present: Sh. Sandeep Kumar Nar APP for the State.
Accused Varinderpal Singh @ Vicky in custody
(produced through VC).
Accused Jagjit Singh @ Raja on bail with counsel Sh. Wikalp Vats.
Adv. Accused Amrik Singh on bail with counsel Sh. JBS Gill Adv.
Accused Satwinder Singh on bail with counsel Sh. PS Pallav Adv.
Accused Harpreet Singh @ Happy on bail with Sh. MP Singh Adv.
Accused Varinderpal singh Vicky produced through VC
by the jail authorities.*

Let he be produced on 31.10.2023. No PW is present. Let summons be issued to witnesses mentioned at Sr. No.1,2 & 3 for 31.10.2023.

Notice to IO be issued for 31.10.2023 with direction to explain the status of this case.

*Date of Order: 23.10.2023
Steno*

*(Palwinder Jit Kaur)
Additional District and Sessions Judge
UID NO. PB00187”*

Order dated 31.10.2023

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Wikalp Vats. Adv.
Accused Amrik Singh on bail with counsel Sh. JBS Gill
Adv.
Accused Satwinder Singh on bail with counsel Sh. PS
Pallav Adv.
Accused Harpreet Singh @ Happy on bail with Sh. MP
Singh*

*Accused Varinderpal singh @ Vicky produced through
VC by the jail authorities. Let he be produced on 23.11.2023.*

*No PW is present. Let summons be issued to witnesses
mentioned at Sr. No. 1,2 & 3 for 23.11.2023.*

*Notice to IO be issued for 23.11.2023 with direction to
explain the status of this case.*

*Date of Order: 31.10.2023
Steno*

*(Palwinder Jit Kaur)
Additional District and Sessions Judge
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7. Learned counsel for petitioner had pointed out that in the present case, case *qua* the present petitioner and 04 other accused was committed to the Court of Sessions on 23.09.2022, but thereafter, a supplementary challan against 03 accused persons, namely, Makhan Singh, Manpreet Singh @ Mani Raiya and Mandeep Singh @ Toofan has been filed by the prosecution on 21.11.2022 and *qua* them, the case has been committed on 26.10.2023 and charges have not been framed as yet and the case is now fixed for 16.11.2023 for framing of charges *qua* them. It is submitted that the said two cases will have to be clubbed and the charges framed against the petitioner on 22.12.2022 would also have to be framed afresh, thus, resulting in further delay in trial. It is pointed out that in the supplementary challan, 27 witnesses have been cited, and none of them have been examined as yet. It is not in dispute that the petitioner was not named in the FIR and is not the owner of the Verna car in which, as per FIR, kidnapped boy,

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namely, Rajan was abducted and the said boy Rajan has been found by the police unharmed. It has been pointed out by learned counsel for petitioner that as per the case of the prosecution, it was Makhan Singh and Mandeep Singh who had abducted the said boy, Rajan, and Makhan Singh has been granted the concession of regular bail by a co-ordinate Bench of this Court vide order dated 10.08.2023 (Annexure P-11) passed in CRM-M-770-2023, regarding, which rectification of clerical error has been ordered on 11.08.2023 (Annexure P-12). The other accused persons, namely, Amrik Singh, Satwinder Singh @ Satwinder Singh Mahal @ Sonu, and Harpreet Singh @ Happy and Jagjit Singh @ Jagjeet Singh @ Raja have also been granted the concession of regular bail by this Court, vide orders dated 21.12.2021 passed in CRM-M-52692-2021, 03.02.2022 passed in CRM-M-1780-2022 and 06.04.2022 passed in CRM-M-2383-2022 & CRM-M-5278-2022 (Annexures P-8 to P-10, respectively).

8. Although it is the case of the prosecution that the petitioner was present at the spot and was apprehended at the time when he had come to collect the ransom money, but keeping in view the abovesaid facts and circumstances and also in view of the law laid down in **Maulana Mohd.'s case** (Supra), this Court deems it appropriate to allow the present petition and grant the concession of regular bail to the petitioner.

9. Accordingly, 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 and subject to him not being required in any other case.

10. The petitioner is stated to be the resident of District Amritsar whereas, complainant is residing in Model Town, Hoshiarpur. As undertaken on behalf of the learned counsel for petitioner, petitioner will not come within a radius of 01 km from the house of the complainant, and in case of violation of the

said condition, it would be open to the State to move an application for cancellation of present bail order.

11. Moreover, it is made clear that in case, any act is done by the petitioner to threaten 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.

12. Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

November 14, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No