

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

205

CRM-M-38499-2023 (O&M)

Date of decision: 02.09.2023

Vikas @ Vicky

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Sanpreet Sandhu, Advocate for the petitioner.

Mr. Gurbir S. Dhillon, AAG, Haryana.

VIKAS SURI, J.

1. Prayer in the present petition under Section 439 Cr.P.C. is for grant of regular bail in case FIR No.89 dated 09.03.2019, under Sections 302, 120-B, 216 IPC and Section 25 of Arms Act, registered at Police Station Kundli, District Sonapat.

2. Learned counsel for the petitioner contends that the petitioner has not been named in the FIR and has been falsely implicated. The case set out by learned counsel for the petitioner for grant of regular bail is that the petitioner has already suffered a reasonable period of custody i.e. 04 years 03 month and 15 days, wherein no specific injury has been attributed to him. The challan has been presented. Charges have been framed and 03 material witnesses have been examined. The said material witnesses have not supported the case of the prosecution and at the request of the Prosecutor were declared hostile. The complainant deposed as witness No.2, the cousin brother of deceased namely Jagjeet son of Balbir deposed as witness No.1 and the other eye witness deposed as witness No.3, which

statements have been collectively appended with the petition as Annexures P-2 to P-4. It is further submitted that no other material witness has been cited by the prosecution and the remaining witnesses are official witnesses. Learned counsel has further submitted that case of the petitioner is at par with co-accused Rohit @ Rocky who has been granted the concession the regular bail by this Court in CRM-M-26802-2023, vide order dated 31.05.2023 (Annexure P-6).

3. Learned State counsel has filed the custody certificate of the petitioner dated 01.09.2023, which is taken on record. The present petition has been opposed and on the basis of custody certificate, it is submitted that the petitioner is involved in other cases as well. However, he is not in a position to deny the fact that the material witnesses i.e. the complainant, the other eye witness and the cousin of the deceased, who had identified the dead body, have not supported the prosecution version.

4. Learned counsel for the petitioner has relied upon the judgment of the Apex Court in ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and another, 2012 (2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application 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 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.”

5. I have heard learned counsel for the parties and perused the

record.

6. Keeping in view the totality of facts and circumstances of the case and submissions made by learned counsel for the respective parties and that the custody of the petitioner as under trial is 04 years 03 months and 15 days as per the custody certificate; the investigation is complete; challan has been presented and the material witnesses including the complainant; eye witnesses have been examined and have not supported the case of the prosecution; the trial is likely to take considerable time; and the petitioner having suffered incarceration for a long period of time in the above noticed circumstances which in itself is punitive in nature and no one can be punished unless or until is proved guilty beyond reasonable doubt.

7. As far as the pendency of other cases is concerned as contended by learned State counsel, no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. It is settled proposition of law by the Apex Court that keeping one behind bars till his guilt is proved, for an indefinite period, amounts to infringement of his right to life and liberty, as enshrined under Article 21 of Constitution of India and is against the principle "bail is rule and jail is an exception".

8. In view of the aforesaid discussion, the present petition deserves to be allowed. Resultantly, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail on his furnishing requisite bail bond and surety to the satisfaction of the trial Court/Duty Magistrate concerned.

9. It is, however, made clear that the petitioner shall not influence

the trial in any manner, directly or indirectly.

10. The observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

September 02, 2023
sumit.k

(VIKAS SURI)
JUDGE

Whether speaking/reasoned :	Yes / No
Whether Reportable :	Yes / No