

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

219 (2 cases)

Surinder

CRM-M-39404-2023 (O&M)
Date of decision: 29.08.2023

....Petitioner

V/s

State of Haryana

....Respondent

CRM-M-36563-2023 (O&M)

Radhey Shyam

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Mandeep Nehra, Advocate
for the petitioner in CRM-M-39404-2023.

Mr. Navjit Singh, Advocate,
for the petitioner in CRM-M-36563-2023.

Mr. Vikas Bhardwaj, AAG, Haryana.

ARUN MONGA, J. (Oral)

Status report in CRM-M-36563-2023 by way of an affidavit of Rajesh Kumar, HPS, Deputy Superintendent of Police, Govt. Railway Police (GRP), Haryana, HQ, Ambala Cantt dated 28.08.2023 on behalf of State of Haryana has been tendered in course of hearing, which is taken on record.

2. After being declined bail by learned trial Court, petitioners before this Court seek their release as undertrial in case bearing FIR No.128 dated 23.05.2022, registered under Sections 328, 379 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC'), at Police Station, GRP, Ambala Cantt, District Ambala.

3. Briefly stated, prosecution case is that on 21.03.2022 complainant Om Parkash was going from Chandigarh to Hardoi (UP) in a train, when some unknown persons looted him after making him unconscious with a drink

containing some intoxicant therein. After he gained his consciousness, he realized that his bag containing old clothes, cash amount of Rs.11,000/- and a mobile phone were stolen from his trousers. FIR was registered. During the course of investigation, petitioner-Radhey Shyam and petitioner-Surinder were arrested on 19.07.2022. Both the petitioners are in custody ever since.

4. Learned counsels for the petitioners submit that petitioners were not named in the FIR. Even as per the allegations leveled in the FIR, it is manifestly clear that some unidentified persons had administered intoxicant substance to the complainant.

4.1 They further submit that petitioners have been booked under Section 328 of IPC for administering intoxicant cold drink 'Mazza' to the complainant, no medical examination of the complainant was got conducted after he reported the matter to the police, to prove that he indeed consumed some intoxicating substance. A very essential element of Section 328 of IPC is that the victim should be administered some poisonous/intoxicating drug. Therefore, forensic examination of the stomach wash, in order to ascertain that the substance which was administered, was poison or other intoxicant, was/is imperative for determining the commission of the offence under Section 328 IPC.

4.2. Learned counsels for petitioners further canvass that there is no medical evidence to corroborate the narrative of the complainant, therefore, Section 328 of IPC is not made out against the petitioners. Petitioners have thus been falsely implicated by complainant in collusion with the police. Petitioners have no link with the alleged occurrence.

4.3. Learned counsels for petitioners also submit that nothing is to be recovered from the petitioners and they are not required for further custodial interrogation. There is no likelihood of petitioners tampering with evidence and/or influencing prosecution witnesses.

5. On the other hand, learned State counsel opposes the bail petitions. He submits that petitioners have committed a serious offence. In case, petitioners are granted concession of bail, there are chances of their fleeing from justice. He further submits that antecedents of petitioner Radhey Shyam were verified by the Investigating Officer and it has been found that petitioner-Radhey Shyam is a habitual offender. Three more cases are pending against petitioner-Radhey Shyam, out of which in two cases, he is on bail. He further submits that likewise, three more cases (one under NDPS Act and two of similar nature) are pending against petitioner-Surinder and he is not on bail in those three cases.

6. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

7. On a Court query, learned State counsel, on instructions from ASI Vikas, submits that challan was filed on 20.09.2022 and charges were framed on 14.12.2022. Allegations against petitioners are a matter of trial at this stage. Out of 10 prosecution witnesses, one has been examined till date. Now the case has been fixed for 19.09.2023. Conclusion of trial is still likely to take long time as it is proceeding at a snail pace. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioners have already been languishing in jail for the past more than 01 year and 01 month, being behind bars since 19.07.2022.

8. Petitioners are being kept in preventive custody merely on an unfounded suspicion that if they are let out, they may either tamper with evidence and/or influence witnesses. There is no probability of tampering with evidence as the same has already been seized by the investigating agency.

9. Petitioner-Surinder is stated to be 27-year old unmarried boy. He has already lost his livelihood due to prolonged incarceration. Petitioner-Radhey Shyam is stated to be 52-year old family person having wife and three children,

who are totally dependent on him and in his absence, they are living in sheer penury. Having family responsibility and fixed abode, it is unlikely that the petitioners pose any flight risk and/or will flee from trial proceedings.

10. Considering the overall scenario and without commenting on merits of the case, both the petitions are allowed. I am of the view that no useful purpose would be served to keep petitioners in further preventive custody in instant case.

11. Accordingly, petitioners are ordered to be released on bail, in case not required in any other case, on their furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where their cases are being tried and in case he/she is not available, before learned Duty Magistrate, as the case may be.

12. In case, petitioners are found to be involved or get involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of their bail in the instant case.

13. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petitions alone and learned trial Court shall proceed without being influenced with this order.

14. Pending application(s), if any, shall also stand disposed of.

15. A photocopy of this order be placed on the connected case file.

(ARUN MONGA)
JUDGE

29.08.2023
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No