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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-40045-2023 (O&M)

Date of decision: 04.09.2023

Atul Tyagi

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Chanakya Pandit, Advocate for the petitioner.

Ms. Palika Monga, DAG, Haryana.

VIKAS BAHL, J. (ORAL)

CRM-33912-2023

1. This is an application filed for grant of leave under Rule 3/A(1) of Chapter VI, Part B, Volume V of Punjab and Haryana High Court Rules and Orders to file the present petition.

2. In view of averments made in the application, the same is allowed and leave is granted under the aforesaid Rules and Orders to file the present petition.

Main case

1. This is the third petition filed under Section 439 Cr.P.C for grant of regular bail to the petitioner in FIR No.141 dated 20.06.2020 registered under Sections 302, 120-B, 34 of the Indian Penal Code, 1860

and Sections 25 and 27 of the Arms Act, 1959 at Police Station HSIIDC, Barhi, District Sonapat.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody since 22.06.2020 (more than 3 years and 2 months) and there are 21 prosecution witnesses, out of which, only four witnesses have been examined and thus, the conclusion of trial is likely to take time. It is further submitted that the last bail application filed by the petitioner was dismissed as withdrawn on 10.02.2023 at that stage and the direction was issued to the trial Court to expedite the trial and at that stage, out of 21 prosecution witnesses, only three witnesses had been examined. Learned counsel for the petitioner has referred to the zimni order dated 18.05.2023 and has filed a copy of the same in the Court today which is taken on record and marked as Mark "A", to highlight the fact that on 18.05.2023, no PW was present and PWs as mentioned at Sr. Nos.2, 3, 5, 8, 14 and 18 have been summoned for 05.10.2023. It is contended that even on 19.04.2023, only one PW namely Constable Dev Dutt was present and examined whereas other witnesses had not appeared and even bailable warrants issued to the PWs-Deepak and Sachin had been received back unexecuted. It is further contended that any further incarceration of the petitioner would be violative of his right under Article 21 of the Constitution of India and that in the present case, there is no eye-witness and the petitioner and one Sachin @ Tinku have been named in the FIR by the complainant namely Ravinder Kumar, who has stated that his son Kuldeep in injured condition had informed him that injuries have been caused by Sachin @ Tinku and the present petitioner. It is further contended that during the course of

investigation, the said Sachin @ Tinku has been found to be innocent and thus, a part of the version given by the complainant, has not been found to be true by the Investigating Agency during the course of investigation. It is further contended that the complainant has been examined in the present case and in his examination-in-chief (Annexure P-3), he has stated that in addition to the present petitioner, Sachin @ Tinku and Ritik had caused injuries to his son as was disclosed by his son to him. It is also submitted that Sachin @ Tinku as well as Ritik have been granted the concession of regular bail. It is thus, prayed that on the basis of the long custody of the petitioner and the aforesaid facts, the petitioner be granted the concession of regular bail.

3. On the other hand, learned State Counsel has opposed the present petition for grant of regular bail to the petitioner and has submitted that in the FIR, the complainant has named the present petitioner as one of the two accused who had caused injuries to his son on the basis of information given by the deceased Kuldeep to the complainant. It is further submitted that recovery of knife which was used in the murder has been effected from the present petitioner and that the petitioner has committed a jail offence for which FIR No.229 of 2023 under Sections 323, 506, 34 of IPC and Section 46 of the Prisons Act, has been registered at Police Station City Sonipat, Sonipat and the petitioner is not on bail in the said case.

4. Learned counsel for the petitioner in rebuttal to the said argument has relied upon the judgment of 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 another case. 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 learned counsel for the parties and has perused the paper book.

6. Keeping in view the abovesaid facts and circumstances more so, the facts that the petitioner is in custody since 22.06.2020 (more than 3 years and 2 months) and out of 21 prosecution witnesses, only four witnesses have been examined as yet and also the fact that in spite of the order passed by this Court on 10.02.2023 to expedite the trial, no witness was present on 18.05.2023 and even on 19.04.2023, only one witness namely Constable Dev Dutt was present and examined and no other PW was present and even the bailable warrants issued to PWs-Deepak and Sachin have been received back unexecuted and thus, the trial has not made much progress and the conclusion of the same is likely to take time and also the fact that in the present case, there is no eye-witness and version given by the complainant has also not been found to be true by the Investigating Agency with respect to Sachin @ Tinku who has also been specifically named by the complainant in the FIR and also the fact that the star witness i.e., complainant namely Ravinder Kumar has already been examined and

the co-accused of the petitioner i.e., Ritik and Sachin @ Tinku who were named by the complainant-Ravinder Kumar in his statement as PW1, have been granted the concession of regular bail and also in view of law laid down in ***Maulana Mohd. Amir Rashadi's case*** (Supra), the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to him not being required in any other case.

7. However, 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.

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

9. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

04.09.2023

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No