

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-40070-2023

Date of decision: 22nd August, 2023

Shubham Kair Pal @ Shubham

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Kunal Jain, Advocate for
Mr. Lakshay Bector, Advocate for the petitioner.
Ms. Navreet K. Barnala, AAG, Punjab.

AVNEESH JHINGAN, J (Oral):

1. The present petition has been filed under Section 439 of Cr.P.C. seeking regular bail in FIR mentioned below:-

FIR No.	Dated	Police Station	Sections
77	20 th May, 2023	Division No.3, District Ludhiana	379-B, 34 of IPC, 1860

2. Learned counsel for the petitioner claims parity with co-accused Mohit who was granted regular bail by this court on 22nd February, 2023 in CRM-M-2956-2023.

3. The following order was passed by this Court on 22nd February, 2023:-

“This is the second petition under Section 439 Cr.P.C. to grant regular bail to the petitioner in FIR No.77 dated 20.05.2022, registered under Sections 379-B, 34 and 411 IPC (added later on), at Police Station Division 3, Ludhiana.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 20.05.2022 and that the earlier bail application filed by the petitioner was withdrawn at that stage on 05.12.2022 and thereafter, the petitioner and the complainant have compromised the matter as per compromise dated 15.12.2022 (Annexure P-4). It is further submitted that as per the said compromise, the complainant has stated that he has no objection for getting the FIR quashed. It is also submitted that as per the allegations, the recovery in the present case has already been effected from the petitioner, thus, no useful purpose would be served by keeping the petitioner in further incarceration.

Learned counsel appearing on behalf of the complainant has reaffirmed the fact that the matter has been compromised and the compromise dated 15.12.2022 is a genuine document and the complainant has no objection in case the present petition is allowed and the petitioner is granted the concession of regular bail.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the mobile phone which has been stolen from the complainant was recovered from the present petitioner. It is further submitted that the petitioner is involved in one more case of a similar nature.

Learned counsel for the petitioner, in rebuttal, has submitted that the petitioner is on bail in the said case and 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 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 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."

*Keeping in view the above-said facts and circumstances, more so, the fact that the petitioner has been in custody since 20.05.2022 and as per the argument of learned counsel for the petitioner as well as learned counsel for the complainant the compromise dated 15.12.2022 (P-4) has been entered into between complainant and petitioner and the fact that as per the said compromise, the complainant has no objection in case the FIR is quashed and also the fact that the recovery has already been made from the petitioner, no useful purpose would be served by keeping the petitioner in further incarceration and also in view of the 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 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.*

However, it is made clear that in case, any act is done by the petitioner to threaten or influence 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.

Nothing stated above shall be construed as a final 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 petition."

4. Learned counsel for the State though opposes the prayer for grant of bail but on instructions fairly submits that challan has been presented. He is not in a position to distinguish the case of the petitioner qua the co-accused so far as grant of bail is concerned.

5. Without commenting on the merits of the case, on the basis of parity of petitioner vis-a-vis co-accused so far as grant of bail is concerned, petitioner has no criminal antecedent and though the investigation is complete conclusion of trial is likely to take time, the petitioner is granted bail subject to his furnishing bail bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.
6. The petition is allowed.
7. Since the main case has been allowed, pending application if any is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

22nd August, 2023
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |