

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

(201)

CRM-M-40848-2023

Date of decision: - 02.09.2023

Sunil

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Pardeep Sehrawat, Advocate
for Mr. Vivek Goyal, Advocate, for the petitioner.

Ms. Rajni Gupta, Additional Advocate General, Haryana.

VIKAS BAHL, J. (ORAL)

1. This is the second petition filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.37 dated 27.09.2021, under Sections 148, 149, 201, 302, 307, 427 and 120-B IPC, registered at Police Station Sector 7, District Panchkula.

2. Learned counsel for the petitioner has submitted that in the present case, the FIR was registered on 27.09.2021 and seven persons had been named in the same, but the petitioner was not named, although in the FIR it was stated that there were 7-8 unknown boys also present at the spot. It is stated that the petitioner has been named as an accused on the basis of disclosure statement of co-accused Pardeep @ Johny, who has been specifically named in the FIR and as per his statement, the petitioner had not given any injury to the deceased, inasmuch as, the injuries have been attributed to Pardeep @ Johny, Vakil alias Vakili, Rajiv alias Pappi, Ravindra @ Binna, Manish and Shekhar, who are alleged to have given

beatings to the deceased. It is contended that the role of the petitioner as per the said statement was that the petitioner was the driver of Ertiga Car and was called by said Pardeep @ Johny to take him and Shekhar to English Liquor shop at old Panchkula, where the other accused persons had also arrived. It is further contended that as per the statement of co-accused Pardeep @ Johny, the petitioner is a taxi driver and is the owner of the Ertiga car and had allegedly taken the accused persons in the said car, but had no other role to play in the incident. It is argued that Shekhar, who has been specifically named in the FIR and has been attributed raising '*lalkara*' as per the FIR, is also stated to have connived with the other accused persons and as per the disclosure statement of Pardeep @ Johny, had even joined the accused persons in giving beatings to the deceased Rinku, has been granted the concession of regular bail, by a Coordinate Bench of this Court, vide order dated 24.07.2023 passed in CRM-M-15884-2023. It is further contended that the case of the present petitioner is on a better footing than the case of said co-accused Shekhar and that the petitioner is in custody since 19.11.2021 and the investigation is complete and challan has been presented and there are 44 prosecution witnesses, out of which, none have been examined and thus, the trial is likely to take time. It is further submitted that the first bail application of the petitioner was withdrawn on 30.09.2022 and thereafter, sufficient period of time has lapsed and yet the trial has still not concluded, thus, the same entitles the petitioner to file the present petition seeking regular bail. It is further submitted that no weapon has been recovered from the present petitioner although the Ertiga Car of which,

the present petitioner is the owner and uses the same as a taxi, had been recovered from him.

3. Learned State counsel, on the other hand, has opposed the present petition for grant of regular bail and has submitted that as per the statement of the said Pardeep @ Johny, even after the incident had taken place, the accused sat in the Ertiga Car of the present petitioner to escape from the spot along-with their weapons and further as per the said statement, it is stated that certain co-accused were dropped by the petitioner and thus, from the said statement, it is apparent that the petitioner is also involved in the incident. It is stated that the petitioner is involved in one more case, thus, does not deserve the concession of regular bail.

4. Learned counsel for the petitioner, in rebuttal to the abovesaid arguments, has stated 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 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 the learned counsel for the parties and has perused the paper book.

6. In the present case, the petitioner has been in custody since 19.11.2021 and the investigation is complete and challan has been presented and out of 44 witnesses, none have been examined and thus, the trial is likely to take time. The petitioner is not named in the FIR although seven persons have been specifically named. Co-accused of the petitioner, namely, Shekhar, who has been specifically named in the FIR and has been attributed raising '*lalkara*' in the FIR and as per the disclosure statement of Pardeep @ Johny, is also stated to be one of the persons who had conspired and given injuries to the deceased-Rinku, has been granted the concession of regular bail by a Co-ordinate Bench of this Court, vide order dated 24.07.2023 passed in CRM-M-15884-2023 and the case of the present petitioner is on a better footing than the case of the said Shekhar. The petitioner is stated to be implicated in the case on the basis of disclosure statement of co-accused Pardeep @ Johny and even as per the said statement, no specific injury has been attributed to the present petitioner, whereas, specific injuries have been attributed to Pardeep @ Johny (himself), Vakil alias Vakili, Rajiv alias Pappi and general attribution of beating up the deceased Rinku had been made to Ravindra @ Binna, Manish and Shekhar as per the said statement. In the said statement of Pardeep @ Johny, he had further stated that when he was in Maheshpur, he had called the present petitioner, who was a driver of Ertiga Car, to come to his place and thereafter he and Shekhar while

travelling in the petitioner's car had reached an English Liquor shop at old Panchkula, where the other accused were also present. He has further stated that they ran away after the incident in the said car. It is case of the petitioner that he is only a taxi driver and he had neither any intention or any role in the murder of the deceased, nor any recovery of weapon has been effected from him. The said aspect would be considered finally by the trial Court on the basis of the evidence and the documents produced before the trial Court.

7. Keeping in view the above-said facts and circumstances 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.

8. 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.

9. 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.

September 02, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes