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

CRM-M-43056-2022 (O&M)
Date of decision : 01.02.2023

Kuldeep @ Kala

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vinod Ghai, Sr. Advocate with
Ms. Kanika Ahuja, Advocate and
Ms. Kashish Sahni, Advocate for the petitioner.

Mr. Rajneesh Chadwal, AAG, Haryana.

Mr. Balkar Singh, Advocate for the complainant.

VIKAS BAHL, J. (ORAL)

This is the second petition filed under Section 439 of Cr.P.C.
for grant of regular bail to the petitioner in FIR No.340 dated 09.10.2020
registered under Sections 148, 149, 341, 307, 302, 323, 120-B of Indian
Penal Code, 1860 and Sections 25/27 of the Arms Act, 1959 at Police
Station Rai, Sonipat.

Learned Senior Counsel for the petitioner has submitted that
the petitioner is in custody since 12.04.2021 and there are 46 prosecution

witnesses and since, the charges have not been framed as yet, thus, the conclusion of trial is likely to take time. It is further submitted that the earlier bail application of the petitioner was withdrawn at that stage on 25.07.2022 and after the said date, the co-accused of the petitioner namely Deepak Kumar, whose alleged role was absolutely similar to that of the present petitioner, has been granted the concession of regular bail vide order dated 15.12.2022 passed by the Additional Sessions Judge at Sonapat. It is contended that even Nirmala Devi, against whom, the allegations levelled are also similar to those made against the present petitioner, has also been granted the concession of regular bail vide order dated 17.10.2022. It is further contended that in spite of a lapse of more than six months after the withdrawal of the first regular bail application, the trial has not progressed and no witness has been examined, thus, entitling the petitioner to file the present second regular bail application. It is argued that even as per the case of the prosecution, it is not the petitioner who was present at the spot or had caused any injury to the deceased or to the injured-Ravinder. It is further argued that as per FIR, it was Sandeep and 5-6 unknown persons who had caused injuries to the said persons. It is also submitted that the only allegation levelled against the petitioner as well as Deepak, Nirmala Devi, Suraj and Pardeep @ Bhola is that there was prior enmity between them and the complainant party and that they were a part of the conspiracy hatched. It is also contended that there is no material on record to suggest that there was previous enmity between the complainant party and the petitioner and

other co-accused or a conspiracy that the petitioner and other co-accused had hatched. It is also argued that no recovery has been effected from the present petitioner in the present case.

On the other hand, learned State Counsel and learned counsel for the complainant have opposed the present petition for grant of regular bail to the petitioner and have submitted that the deceased had suffered gunshot injuries and even the injured-Ravinder had also suffered a bullet injury on his left arm. It is further submitted that the petitioner alongwith other co-accused had conspired to kill the deceased on account of previous enmity. It is contended that the petitioner is involved in six other cases and is a habitual offender. However, the other facts have not been disputed by them.

Learned Senior Counsel for the petitioner, in rebuttal, has submitted that the petitioner is on bail in the other cases 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.”

This Court has heard learned counsel for the parties and has perused the paper book.

In the present case, the petitioner is in custody since 12.04.2021 and there are 46 prosecution witnesses and since, charges have not been framed as yet, thus, the conclusion of trial is likely to take time. The earlier bail application of the petitioner was dismissed as withdrawn on 25.07.2022 at that stage and after the said order had been passed, co-accused of the petitioner namely Deepak Kumar, against whom the allegations levelled are similar to those as have been levelled against the present petitioner, has been granted the concession of regular bail vide order dated 15.12.2022 passed by the Additional Sessions Judge at Sonapat. Nirmala Devi, against whom also, similar allegations as those levelled against the present petitioner have been levelled, has also been granted the concession of regular bail by the Additional Sessions Judge at Sonapat vide order dated 17.10.2022. Even as per the case of the prosecution, it is not the petitioner who was present at the spot or had caused any injury to either the deceased or the injured-Ravinder. No recovery has been effected from the present petitioner. There are allegations of conspiracy levelled against the present petitioner alongwith Deepak Kumar and three other persons. It is the case of the petitioner that there is no material suggesting such alleged conspiracy or to link the petitioner to the crime in question. The said aspect, however, would be finally considered at the time of the trial.

Keeping in view the abovesaid facts and circumstances 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.

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.

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.

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

01.02.2023

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**