

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-44255-2022

Date of decision : 16.01.2023

Dharampal @ Baka

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Rohit Mittal, Advocate
for the petitioner.

Ms.Upasana Dhawan, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is the second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.408 dated 18.12.2021 registered under Sections 323, 506, 285, 395, 397, 120-B and 201 IPC and Sections 25/54/59 of the Arms Act at Police Station Sadar Narnual.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 22.12.2021 and there are 22 witnesses, out of which, none have been examined. It is further submitted that the petitioner had earlier filed regular bail petition which was dismissed as withdrawn at that stage on 22.07.2022 and even thereafter, no witness has been examined and the trial has not made any progress. It is stated that the investigation in the present case is complete and no purpose would be served by keeping the petitioner in further incarceration. It is also stated that no recovery of any pistol has been effected from the present petitioner and

had gone on one motor cycle whereas the other three accused, who were carrying pistols, were on the other motor cycle. It is further submitted that said Nitesh @ Padar has already been granted the concession of regular bail by the Additional Sessions Judge, Narnaul.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that recovery of Rs.1120/- has been effected from the present petitioner and one motor cycle has also been recovered from him and the petitioner is involved in one more case. The other facts have, however, not been disputed.

Learned counsel for the petitioner, in rebuttal, 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.”

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

Keeping in view the above said facts and circumstances moreso, the fact that the petitioner has been in custody since 22.12.2021 and

there are 22 witnesses and none of them have been examined and thus, the

trial is likely to take time and even the petitioner had withdrawn the earlier petition for regular bail on 22.07.2022 and thereafter no witness has been examined and the trial has not made any progress and also the fact that no pistol has been recovered from the present petitioner and as per the case of the prosecution, the petitioner and co-accused Nitesh @ Padar were coming on motor cycle and other three persons who were carrying weapons, were on other motor cycle and also the fact that said Nitesh @ Padar has been granted concession of regular bail by the Additional Sessions Judge, Narnaul, and also keeping in view the law laid down in ***Maulans'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.

(VIKAS BAHL)
JUDGE

January 16, 2023

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No