

228

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

CRM-M-43109-2023 (O&M)

Date of decision: 12.09.2023

Raju

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Manvinder Singh Dalal, Advocate for the petitioner.

Mr. Amandeep Joshi, DAG, Haryana.

VIKAS BAHL, J. (ORAL)

1. This is a second petition filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in FIR No.42 dated 16.02.2021 registered under Sections 387, 307, 120-B of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959 (Section 216 of IPC has been added later on) at Police Station Kalayat, District Kaithal.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody since 05.03.2021 and the investigation is complete and challan has been presented and there are 37 prosecution witnesses, out of which, only 13 witnesses have been examined as yet and thus, the conclusion of trial is likely to take time. It is further submitted that the last bail application of the petitioner was dismissed as withdrawn at that stage

on 20.12.2022 with directions to the trial Court to expedite the trial but the trial has not been concluded as yet. It is contended that the present case is a case of no injury and that the petitioner was not named in the FIR although, three persons were specifically named in the FIR. It is further contended that FIR, in the present case, has been registered on the statement of Shekhar and said Shekhar has been examined as PW1 and in his examination-in-chief, he has stated that none of the accused persons who were present in Court that day, had fired upon him and has not supported the case of the prosecution and has thus, been declared as hostile. It is further contended that even as per the FIR, it was stated that one person had fired towards the complainant with an intention to kill but the bullet hit the stairs and not the complainant and as per the prosecution case, it was Satish who had fired and not the present petitioner. It is argued that on the basis of the said facts as well as long custody, the petitioner deserves 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 the gang headed by Praveen @ Binny operates to extort money from the general public and Rs.15 lacs was sought to be extorted from the complainant in the present case and the present petitioner is part of the said gang. It is further submitted that the petitioner is a habitual offender and other FIRs have been registered against him and thus, he does not deserve the concession of regular bail.

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 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.”

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 fact that the petitioner is in custody since 05.03.2021 and the investigation is complete and challan has been presented and out of 37 prosecution witnesses, only 13 witnesses have been examined and thus, the conclusion of trial is likely to take time and also the fact that the present case is a case of no injury and that the petitioner was not named in the FIR and that the FIR was registered on the statement of Shekhar who has been examined as PW1 and in his examination-in-chief, he has stated that none of the accused persons had fired shots from the country made pistol upon him with an intention to kill and thus, has not supported the case of the prosecution and also the fact that even as per the prosecution case, it was Satish (co-accused) who had fired shots and not the present petitioner 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.

12.09.2023

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No