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

CRM-M-43938-2023
Date of decision: 13.09.2023

Kuldeep @ Rahis

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Aditya Sanghi, Advocate for the petitioner.

Ms. Palika Monga, DAG, Haryana.

Mr. Mayank Yadav, Advocate for the complainant.

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.279 dated 18.06.2020 registered under Sections 148/149/323/302/506/120-B of the Indian Penal Code, 1860 and Sections 25/54 of the Arms Act, 1959 at Police Station City Mahendergarh, District Mahendergarh, Haryana.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody since 18.06.2020 (more than 3 years and 2 months) and the investigation is complete and challan has been presented and eight prosecution witnesses are yet to be examined and thus, the conclusion of trial is likely to take time. It is further submitted that the previous bail

application of the petitioner was dismissed as withdrawn on 30.08.2022 as an objection was raised by the State Counsel that material witnesses namely Bijender (PW2), Sube Singh (PW1), Hoshiyar (since deceased) and Krishan (PW9) had not been examined so far at that stage and while withdrawing the said petition, liberty was granted to the petitioner to file a fresh petition after the said witnesses had been examined before the trial Court. It is further submitted that after the said witnesses were examined, the petitioner had filed a regular bail application before the trial Court which was dismissed vide order dated 16.06.2023 (Annexure P-15). Learned counsel for the petitioner has submitted that as per the FIR which was registered on the statement of Bijender (complainant), a fight had taken place on account of the fact that the petitioner along with Sonu while driving the motorcycle used to visit the house of one Dholi at a high speed and the petitioner and the said co-accused Sonu on being stopped from doing the same by the complainant party had committed the said crime. It is further contended that a perusal of the FIR would show that neither there was any prior enmity nor there was any intention to kill on the part of the petitioner or his co-accused Sonu to commit the offence and in the said situation, question “as to whether an offence under Section 302 or under Section 304 of IPC is made out” would be a matter of debate during the course of trial. It is also submitted that although, allegations have been levelled against the petitioner and Sonu with respect to firing of gunshot but PW2-Bijender, who is the complainant as well as the eye-witness of the occurrence, has, in his evidence in chief, stated that Sonu was not the person who had attacked or killed his mother and thus, qua the said co-accused Sonu, he has turned

hostile. It is contended that the evidence of PW9-Krishan Kumar, who is, as per the case of the prosecution, an injured witness, is also to the same effect. It is further contended that the said Sonu has already been granted the concession of regular bail by a Coordinate Bench of this Court vide order dated 26.05.2023 passed in CRM-M-16445-2023. With respect to the recovery of weapon from the present petitioner, learned counsel for the petitioner has made a reference to the evidence of PW8-Constable Mandeep to show that the said recovery has been effected from an open space which is accessible to all and no respectable of the village or any public person was joined in the said recovery. It is further contended that in view of the abovesaid facts and also keeping in view the long custody of the petitioner, the petitioner deserves the concession of regular bail. It is also contended that the petitioner, in order to remove any apprehension from the mind of the complainant, would not go within 500 meters of the house of the complainant.

3. On the other hand, learned State Counsel as well as learned counsel appearing on behalf of the complainant have opposed the present petition for grant of regular bail to the petitioner and have submitted that the petitioner is the main accused and the recovery of country made pistol has been effected from the present petitioner and both the eye-witnesses i.e., PW2-Bijender (complainant) and PW9-Krishan Kumar, have deposed against the petitioner in affirmative terms in their evidence. It is further submitted that the petitioner is involved in two other cases and thus, does not deserve the concession of regular bail.

4. Learned counsel for the petitioner in rebuttal to the said

argument has submitted that the petitioner has been acquitted in both the abovesaid 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 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. In the present case, the petitioner is in custody since 18.06.2020 (more than 3 years and 2 months) and the investigation is complete and challan has been presented and eight prosecution witnesses are yet to be examined and thus, the conclusion of trial is likely to take time. A perusal of the FIR would show that the same has been registered on the statement of the complainant-Bijender who is also stated to be an eye-witness of the occurrence in question and the allegations levelled against the petitioner and Sonu are similar in nature. In the FIR, it has been stated that the present petitioner and Sonu with their illegal weapon, had fired gunshots, out of which, one bullet hit the stomach of mother of the complainant. A perusal of

evidence of PW2-Bijender (complainant) and PW9-Krishan Kumar would show that the said two witnesses have turned hostile qua co-accused Sonu and in their examination-in-chief, have specifically stated that the said Sonu is not the person who had attacked or killed the mother of the complainant. The said Sonu has been granted the concession of regular bail by the Coordinate Bench of this Court vide order dated 26.05.2023 passed in CRM-M-16445-2023. Further perusal of the FIR would show that the incident had taken place on account of the complainant party restraining the petitioner and said Sonu from driving the motorcycle at a high speed while going towards the house of Dholi. The argument of learned counsel for the petitioner that in such a situation, even as per the version in the FIR, the offence under Section 304 of IPC would be attracted and not Section 302 of IPC, would be considered by the trial Court during the course of trial. This Court does not wish to give any final opinion on the merits of the same, lest it would prejudice the case of either of the parties. There is no criminal case pending against the petitioner.

7. Keeping in view the abovesaid facts and circumstances more so, the factum of long custody of the petitioner 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 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 and also subject to the petitioner not going within 500 meters of the house of the complainant.

8. 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.

9. 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.

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

13.09.2023
Pawan

(VIKAS BAHL)
JUDGE

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