

CRM-M-45330-2023Neutral Citation No. 2023:PHHC:135022CRM-M-46245-2023Neutral Citation No. 2023:PHHC:135026

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: October 12, 2023
Date of Decision: October 17, 2023

1.CRM-M-45330-2023

Sunil Kumar @ Rana...Petitioner

Versus

State of Haryana...Respondent

2.CRM-M-46245-2023

Vineet @ Vicky...Petitioner

Versus

State of Haryana...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Ms. Garima Sharma, Advocate for the petitioner
in CRM-M-45330-2023.

Mr. Fateh Saini, Advocate for the petitioner
in CRM-M-46245-2023.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.

This order shall dispose of two petitions as above, as in both of them, prayer has been made for grant of regular bail under Section 439 Cr.P.C in a case arising out of FIR No.13 dated 30.01.2019 registered under Sections 216, 302, 394, 395, 396, 397, 120-B IPC and under Section 25 of Arms Act, at Police Station Sector 20, Panchkula.

2. FIR in question was registered on the complaint of Vinod Kumar son of Pawan Kumar, resident of Sector 20, Panchkula, as per which, on 30.01.2019 at about 05:00/05:30 PM, he along with his 10-12

friends was playing cards in the showroom, in Sector 20, Panchkula, when 8-10 youths entered the showroom, all carrying weapons. 2-3 of them opened fire at them and scared them by brandishing their pistols and asked them to hand over whatever cash or gold they had. Upon resistance by 2-3 of the complainant's companions, they were given beatings with the help of helmets. 2-3 of the intruders also fired shot at them. All of them took away all their cash, mobile phones, gold ornaments and fled away while firing upon them. One of the gun shot hit Sunny, who was taken to the hospital.

3. (i) Investigation was carried out. Spot was inspected. Empty cartridges, live cartridges, blood, mobile phones, driving licenses, helmets, LED and hard disc regarding CCTV footage, in which accused were captured from Katani Sweets near the place of occurrence, were taken into possession. Place of occurrence was also examined by team of scene of crime. On 31.01.2019, injured Sunny succumbed to the fire arm injury.

(ii) It was found during investigation that in case FIR No.95 of 2019 registered at Police Station Badapur, District Bijnor (UP) under Sections 302 and 307 IPC, co-accused Rohit had suffered disclosure statement to the Police that he along with Naveen, Hemant @ Lala, Vineet @ Vicky (*petitioner in CRM-M-46245-2023*), Mohit; and Sunil Kumar @ Rana (*petitioner in CRM-M-45330-2023*) had made the plan, as per which the dacoity was committed in the showroom of Panchkula by Kuldeep, Mohit and other boys, who had come from Delhi and that during the incident, one person had died. Hemant, Naveen and Sunil (*petitioner*) were arrested from time to time. Their disclosure statements

resulted in recovery of some of the cash amount, mobile used in the crime

and Swift car. It also emerged in the disclosure statement that planning to commit dacoity was made at House No.92, Sector 25, Panchkula. During further investigation, co-accused Jitender Kumar @ Jony was arrested on 09.06.2019. Based on the disclosure statement suffered by him during investigation, ₹3,000/-, gold ring and one mobile was recovered from him. He also disclosed the names of other persons, who had entered the showroom to commit dacoity as Raj Pal Singh, Irfan, Atlaf and others. Co-accused Raj Pal Singh was arrested on the same date i.e., 09.06.2019 and based on his disclosure statement, one mobile, ₹3,000/- and a sweat-shirt worn by him at the time of crime which was also evident in CCTV footage, were recovered. Co-accused Atlaf Khan and Irfan were also arrested on the same day i.e., 09.06.2019 and recoveries of cash amount and mobile were made. During further investigation, test identification parade was conducted on 10.06.2019 before learned jurisdictional Magistrate, Panchkula, in which four co-accused, namely, Jitender Kumar, Atlaf Khan and Raj Pal Singh, besides Irfan were identified by the complainant. Customer application forms of all the petitioners confirmed their location near the place of occurrence. During further investigation, Kuldeep @ Baba, Mohit and Mahesh were also arrested. Rest of the accused including Vinay are yet to be arrested.

4. Final report under Section 173 Cr.P.C was filed against arrested accused. Out of 75 witnesses cited by the prosecution, 33 have already been examined and the next date of hearing before the Trial Court is 30.11.2023.

5. It is contended by learned counsel for petitioner-Sunil Kumar @ Rana that said petitioner is not named in the FIR; that he is in custody

for the last more than 04 years; that the trial may take long time to

conclude having regard to the long list of witnesses, out of which only 33 have been examined; that similarly placed co-accused, Rohit, Naveen; Kuldeep @ Bawa, Mohit have already been allowed bail by this Court by way of different orders (Annexures P-2 to P-3) and Hemant by Lower Court vide Annexure P-6. Learned counsel has also drawn attention towards the order dated 17.04.2023 passed by this Court in CRM-M-31621-2022, CRM-M-40835-2022 and CRM-M-43964-2022, whereby bail was declined to co-accused Raj Pal Singh @ Jaspreet Singh @ Jassi, Jitender Kumar @ Jony and Altaf Khan, so as to contend that benefit of regular bail to them was declined, as they were found to have actually entered the showroom, so as to commit the crime. It is also pointed out that it had been observed by this Court that co-accused Hemant Kansal, Rohit, Naveen, Kuldeep @ Bawa and Mohit had been allowed bail, as the only role attributed to them was in the nature of conspiring with the other accused and to have conducted recce of the area and to be present near the place of occurrence. Learned counsel contends that the case of the petitioner is on parity with co-accused Hemant Kansal, Rohit, Naveen, Kuldeep @ Bawa and Mohit, who have already been allowed bail. Prayer is made for grant of bail.

6. On behalf of petitioner-Vineet @ Vicky, it is contended by learned counsel that said petitioner is not named in the FIR; that no injury is attributed to him; that he did not enter the showroom as per own allegations of the prosecution; and that the only role attributed to him is to have conspired with the co-accused and that he had taken them from Panchkula to Delhi in his car. Apart from this, similar contentions have been raised to the effect that similarly placed co-accused have already been allowed bail; and that bail has been declined by this Court only to

those co-accused, who had actually entered the showroom to commit the crime. Prayer is made for grant of regular bail.

7. Opposing the bail petition of petitioner-Sunil Kumar @ Rana, it is contended by learned State counsel that said petitioner was known to the complainant Vinod @ Bunty, as he used to visit the office of the complainant and was aware about the fact that lot of rich people visit the place wearing gold jewellery etc. and it is the said petitioner, who formulated the idea of committing the robbery at the showroom of the complainant with his other companions. Learned State counsel contends that said petitioner being the main conspirator, does not deserve the benefit of bail. Learned counsel has also drawn attention towards the criminal antecedents of the said petitioner, who is stated to be involved in two more cases as detailed in para-No.6 of the status report.

8. Regarding petitioner-Vineet @ Vicky, learned State counsel submits that he is also one of the main conspirators in the commission of crime, as co-accused Sunil had shared the information with the said petitioner and then they along with other co-accused planned to commit the crime by hiring other co-accused. It is also contended that said petitioner used to keep 6-7 pistols with him. Learned state counsel has also drawn attention towards the criminal antecedents of the said petitioner, who is stated to be involved in four more cases as detailed in para-No.5 of the status report. With these submissions, prayer is made for declining the bail petition.

9. I have considered submissions of both the sides and have also perused the record carefully.

10. This Court while dismissing the regular bail petitions of co-accused Raj Pal Singh @ Jaspreet Singh @ Jassi, Jitender Kumar @ Jony

and Altaf Khan, vide a common order dated 17.04.2023 passed in CRM-M-31621-2022, CRM-M-40835-2022 and CRM-M-43964-2022, respectively, had found that three petitioners of those cases were found to have participated in the commission of crime by entering the showroom and then they along with other companions fired shots with pistols resulting in one death and fire arm injuries to others. It was also observed by this Court that those three accused besides one Irfan had been identified during a test identification parade by the complainant. It is because of these reasons that benefit of bail to them was declined to them.

11. Regarding co-accused, who had already been allowed bail, it was observed by this court in its order dated 17.4.2023, referred above, as under: -

“--- As per the investigation, all the three accused were found to have participated in the crime by actually entering the showroom, where they along with other companions indiscriminately fired shots with pistols, resulting in one death and fire-arm injury to other. They committed dacoity at the point of firearms. They were identified in the test identification parade conducted before learned Judicial Magistrate Ist Class. As far as grant of regular bail to the coaccused, namely, Hemant Kansal, Rohit, Naveen, Kuldeep alias Baba and Mohit is concerned, perusal of the bail orders pertaining to them would reveal that it was specifically observed that role attributed to them was in the nature of conspiring with the remaining accused inasmuch as they had conducted recce of the area and were present near the place of occurrence for doing help in case anything went wrong, when the other co-accused had barged into the showroom of the complainant but they had not actually entered the showroom.--”

12. In the present case, it is not disputed by learned State counsel

Hemant Kansal, Rohit, Naveen, Kuldeep @ Bawa and Mohit, as all of them are attributed to have conspired with co-accused and to have conducted recce of the area etc. Although, petitioner Sunil Kumar @ Rana is alleged to be the main conspirator, having formulated the idea of committing the crime, as he used to visit the showroom of the complainant and was aware of visit of rich people wearing gold jewellery etc., but it is conceded position that he had not entered the showroom on the date of crime. Similar is the case of petitioner Vineet @ Vicky.

13. Apart from above, the custody certificates produced on record in both the cases, reveal that on 11.10.2023, the custody period of petitioner Sunil Kumar @ Rana is 04 years, 04 months and 12 days; whereas custody period of petitioner Vineet @ Vicky as on 11.10.2023 is 01 year, 01 month and 29 days.

14. No doubt, both the petitioners are also involved in others cases, as per the details given in the status report as well as in the custody certificates, but having regard to the role attributed to them in the present crime, their involvement in other cases, cannot be a ground to decline bail, as has been held by the Hon'ble Supreme Court in the case of ***Maulana Mohd. Amir Rashadi vs. State of UP and another, 2012(1) RCR (Criminal) 586***, as under: -

“It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. 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.”

15. Similarly, in the case of **Prabhakar Tewari vs. State of UP and another 2020(1) RCR (Criminal) 831** Hon’ble Supreme Court has observed as under: -

“The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail. The High Court has exercised its discretion in granting bail to the accused Vikram Singh upon considering relevant materials. No ex-facie error in the order has been shown by the appellant which would establish exercise of such discretion to be improper. We accordingly sustain the order of the High Court granting bail.”

16. It is, thus, clear that the allegation of grave and serious offence or the pendency of several other criminal cases against the accused-petitioner, cannot be the basis to refuse bail.

17. Besides, list of prosecution witnesses is quite long being 75 and only 33 have been examined so far as per the status report. Thus, the trial is likely to take time to conclude.

18. Having regard to all the aforesaid facts and circumstance and particularly on the basis of parity with co-accused, who have already been allowed bail, but without commenting anything further on the merits of the case, both the petitions are allowed. Both the petitioners are admitted to bail. They are ordered to be released on bail on their furnishing requisite bail bonds and surety bonds to the satisfaction of learned Trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

October 17, 2023
sarita

(DEEPAK GUPTA)
JUDGE

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