

CRM-M-44898-2023 (O&M)

229

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-44898-2023 (O&M)

Date of decision: October 11, 2023

Sandeep @ Mota

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Ashok K. Sharma (Bhana), Advocate for petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (ORAL)

Following the denial of bail by the learned trial Court, the petitioner is now before this Court seeking his release as an undertrial in a case FIR No.265 dated 27.05.2023, registered under Sections 380 and 457 of the Indian Penal code, 1860 (hereinafter referred to as 'IPC') (Section 201 of IPC added later on), at the City Jind, Police Station in Jind.

2. The prosecution's case is that on May 27, 2023, the complainant, Intzar Khan, alleged that on the intervening night of 26/27.05.2023, three mobile phones (VIVO Y15, Redmi, and Samsung), a Bajaj Platina-110 bike, a black-colored purse containing Rs. 2,000/-, one ATM Card of AXIS Bank, Aadhar Card, Voter Card, and cash amounting to Rs. 20,000/- were stolen by some unknown persons from his house.

2.1. During the investigation, on May 29, 2023, the complainant's purse was recovered from his house, which was thrown by the thieves, and the purse along with documents were taken into possession by the police. During further investigation, on July 06, 2023, the accused, Sandeep @ Mota (petitioner), was arrested in this case. He made a disclosure statement regarding his involvement in the commission of the crime along with co-accused Manish @ Manni. On the same day, co-accused Manish @ Manni was also arrested, and during interrogation, he made a disclosure statement stating that they had thrown the purse of the complainant on the roof of his house. Later,

CRM-M-44898-2023 (O&M)

the petitioner and co-accused Manish and Manni retracted from their previous disclosure statements and made another disclosure statement. In pursuance thereof, the petitioner recovered the stolen Bajaj Platina motorcycle without a number plate from his house, and co-accused Manish @ Manni recovered two mobile phones, Redmi and VIVO (without SIMs). Since co-accused Manish @ Manni had thrown the SIMs from the aforesaid mobile phones and had also thrown one mobile phone, Section 201 IPC was added to the case.

3. Foremost, the learned counsel for the petitioner argues that the co-accused of the petitioner, namely, Manish @ Manni, has already been granted bail by the learned Court below, vide order dated 04.08.2023 (Annexure P-3).

3.1. The learned counsel for the petitioner contends that the petitioner is not named in the FIR. No specific allegations have been leveled against the petitioner. The petitioner has been implicated based on his disclosure statement, which is not admissible evidence.

3.2. The learned counsel for the petitioner relies on a decision of this Court in **Vijay Kumar versus State of Haryana**¹ to argue that in that case, the petitioner therein was involved in 28 other cases, acquitted in 22 cases, but was yet granted anticipatory bail. He further argues that the registration of other cases in which the petitioner is merely a suspect cannot be the reason for the denial of bail in the present case, unless the Court finds otherwise that the petitioner deserves concession.

3.3. Finally, he submits that nothing needs to be recovered from the petitioner, and he is not required for further custodial interrogation. There is no likelihood of the petitioner tampering with evidence or influencing prosecution witnesses.

4. Per contra, the learned State counsel vehemently opposes the petition, expressing concerns about the petitioner potentially fleeing during trial proceedings if granted bail. He contends that the allegations against the petitioner are grave. He further submits that petitioner is involved in 11 other cases, and in 07 he is on bail. In 13 cases,

CRM-M-44898-2023 (O&M)

petitioner has been convicted and has undergone sentence in 01 case. In other 02 cases, petitioner has been acquitted.

5. I have heard the rival arguments and reviewed the case file.

6. In response to a query from the Court, under instructions from HC Karishan Kumar, learned State counsel informs that the challan has already been filed. Thus, the investigation regarding the petitioner is complete, and he is not required for custodial interrogation.

7. At this stage, the allegations against the petitioner are subject to trial. The trial's progress has been slow, and it is anticipated to take a considerable amount of time. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since July 06, 2023, for more than 03 months.

8. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that he might tamper with evidence or influence witnesses. There is no probability of tampering with evidence as it has already been seized by the investigating agency.

9. Co-accused of the petitioner has already been granted concession of bail by Court below.

10. Be that as it may, the offence allegedly committed by the petitioner is non-violent in nature, and in that sense, his release on bail does not pose a threat to society at large in terms of committing any violent crime.

11. The petitioner is stated to be a 33-year-old person having family to look after. He has added responsibilities of his old age parents suffering from various old-age diseases. They all are dependent on him and are living in sheer penury in his absence. Being a family man and having a fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

12. Considering the overall scenario, without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served by keeping the petitioner in further preventive custody.

16. Pending applications, if any, shall also stand disposed of.

October 11, 2023
mahavir

Whether reportable:	Yes/No
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