

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

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CRM-M-48588-2023(O&M)
Date of decision: 29.09.2023

Atish Kumar @ Brahman Atish

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. PBS Goraya, Advocate for the petitioner.

Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY, J.

1. Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.135 dated 20.10.2022, registered under Sections 25(8), 54 and 59 of Arms Act, 1959 and Sections 379 and 411 IPC, at Police Station E-Division (Kotwali), Amritsar.
2. Learned counsel contends that the petitioner is in custody for more than 11 months. As per the allegations, the petitioner is stated to be carrying a 30 bore pistol, however, the same is not alleged to have been used in commission of any offence. The said weapon stands recovered from him. Co-accused, who is similarly circumstanced namely Avinash Kumar, from whom also the 30 bore pistol was recovered, has been granted regular bail by this Court, after being in custody for about 10 months vide order dated 17.08.2023, Annexure P-1. Charges stand framed on 18.01.2023, however, none out of 16 prosecution witnesses has yet been examined. He is involved in one more case, in which he is on bail,

similar was the position in case of co-accused Avinash Kumar. Reliance is placed on the judgment of Hon'ble The Supreme Court in **Maulana Mohd. Amir Rashadi vs. State of U.P. and others**, 2012(2) SCC 382.

3. The custody certificate dated 28.09.2023, filed by learned State counsel is taken on record, as per which, the petitioner is behind bars for 11 months and 5 days.

4. Learned State counsel opposes the bail on the ground that there are serious allegations against the petitioner, he being a companion of gangsters and was apprehended with an unlicensed pistol along with 35 live cartridges. He is however unable to controvert the submissions made regarding the stage of trial, co-accused has been granted bail and the petitioner being on bail in another case.

5. Heard.

6. Hon'ble The Supreme Court in the case of **Maulana Mohd. Amir Rashadi** (Supra) had held that, "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."

7. Considering the facts and circumstances of the case, in particular that the petitioner is in custody for last 11 months and 5 days; on bail in the other case; co-accused has been granted bail; charges having been framed on 18.01.2023, however, there a total of 16 prosecution witnesses, who have to be examined; the trial is likely to take a considerable time, thus his further incarceration would not serve any

useful purpose, the present petition for grant of regular bail deserves to be allowed.

8. As a result, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to his not being required in any other case. The petitioner shall abide by the following conditions:-

- (i) The petitioner will not tamper with the evidence during the trial.
- (ii) The petitioner will not pressurize/ intimidate the prosecution witnesses.
- (iii) The petitioner will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.
- (iv) The petitioner shall not commit an offence similar to the offence of which, he is an accused, or for commission of which he is suspected of.
- (v) The petitioner shall not directly or indirectly coerce, induce, threaten or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence in any manner.
- (vi) The petitioner shall not in any manner misuse his liberty.
- (vii) The petitioner shall furnish his address and mobile number to the Trial Court forthwith and shall not change the same till the conclusion of the trial and in case for any reason, the petitioner seeks to change any of the aforesaid, the same shall be done only with prior intimation to the learned Trial Court, stating the reason for the same.
- (viii) The petitioner shall not leave the country without prior permission of the trial Court.
- (ix) The trial Court/Duty Magistrate may impose any other condition, as deemed appropriate while releasing the petitioner.

9. It is made abundantly clear that in case there is any breach of

the aforesaid conditions, the State shall be at liberty to seek cancellation of bail as granted to the petitioner by this order.

10. In view of the above, it is clarified that the observations made herein are limited for the purpose of present proceedings and would not be construed as an opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

29.09.2023
ashok

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No