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

CRM-M-51302-2022 (O&M)

Date of decision : 25.04.2023

Mandeep @ Setha

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ajay Kadyan, Advocate for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana

VIKAS BAHL, J. (ORAL)

1. This is a second petition filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.760 dated 11.11.2020 registered under Sections 120-B, 304, 328, 272, 420, 467, 468, 471 of IPC and Sections 72(A), 61 of the Punjab Excise Act, 1914 (Haryana Amendment Bill, 2020) at Police Station Sonipat City, District Sonipat.

2. Learned counsel for petitioner has submitted that the petitioner has been in custody since 25.12.2020 and the investigation is complete and the challan has already been presented and there are 40 prosecution witnesses, out of which, only one witness has been examined and thus, the trial is at its initial stage and is likely to take time. It is further submitted that the previous bail application of the petitioner was dismissed as

withdrawn on 27.09.2022 with liberty to file a fresh petition after giving full and better particulars and the present petition has been filed after giving full and better particulars and thus, in effect, the present petition is the first petition for grant of regular bail to the petitioner. It is further submitted that the petitioner was not named in the FIR and the FIR has been registered on the statement of one Rajjo wife of Mahender, who alleged that her husband consumed spurious liquor and died. It is contended that in the FIR, it has been specifically mentioned that the deceased Mahender had told the complainant that on 31.10.2020, he had purchased country made liquor 'Rasila' from one Raunak son of Bijender. It is further submitted that Raunak was arrested and in his disclosure statement dated 08.11.2020 he had named several persons but had not named the present petitioner. It is also submitted that even in the second disclosure statement dated 16.11.2020 (Annexure P-10), said Raunak had not named the present petitioner and the present petitioner was implicated only on the basis of disclosure statement dated 25.12.2020 (Annexure P-12) of co-accused Naresh @ Nancy and after recording the said disclosure statement, the petitioner was arrested on 25.12.2020 and even thereafter, no recovery has been effected from the present petitioner. Learned counsel for the petitioner has further submitted that the co-accused of the petitioner namely Sandeep @ Mama and Mohit @ Moti have been granted the concession of regular bail by this Court vide order dated 29.08.2022 passed in CRM-M-12607-2022 and that the case of the present petitioner is on a similar footing with the case of the said co-accused persons.

3. Learned State counsel has opposed the present petition for

grant of regular bail to the petitioner and has submitted, on instructions from SI Sanjay, that as per the disclosure statement of the present petitioner, the petitioner had contributed Rs.1 lac for the purpose of manufacturing and supplying spurious liquor and that the petitioner is involved in several cases and is a habitual offender.

4. Learned counsel for the petitioner, in rebuttal, has submitted that the facts of the present case are to be considered for the purpose of present bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other 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**. 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 25.12.2020 and the investigation is complete and the challan has already been presented and out of 40 prosecution witnesses, only one witness has been examined and thus, the trial is at its initial stage and is likely to take time. A perusal of

the FIR would show that it has been stated by the complainant Rajjo that her husband had died after consuming spurious liquor and her husband had informed her that on 31.10.2020, he had purchased country made liquor 'Rasila' from one Raunak son of Bijender and the present petitioner was not named in the FIR. Co-accused Raunak was arrested and thereafter, two supplementary statements dated 08.11.2020 and 16.11.2020 of said Raunak were recorded but the said Raunak had not named the present petitioner in either of the said two statements. The petitioner has been implicated on the basis of disclosure statement of co-accused Naresh @ Nancy dated 25.12.2020 and after the said disclosure statement, the petitioner was arrested and even after his arrest, no recovery has been effected from him. The question whether the petitioner is involved in the present incident or not, would be finally adjudicated during the course of the trial. Co-accused of the petitioner namely Sandeep @ Mama and Mohit @ Moti have been granted the concession of regular bail by this Court vide order dated 29.08.2022 passed in CRM-M-12607-2022 and that the case of the present petitioner is on a similar footing with the case of the said co-accused persons.

7. Keeping in view the abovesaid facts and circumstances 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 bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to him not being required in any other case.

8. It is made clear, in case, the petitioner threatens or influences

any witness, it would be open to the State to move an application for cancellation of the present regular bail granted to the petitioner.

9. Nothing stated above shall be construed as a final 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 petition.

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

25.04.2023
Pawan

(VIKAS BAHL)
JUDGE

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