

2023:PHHC:159789

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

227

CRM-M-52716-2023

Date of decision : 13.12.2023

Sahil Wadhawan

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. M.S. Rana, Advocate
for the petitioner.

Mr. Jaswinder Singh Arora, DAG, Punjab.
With ASI Sunder Singh.

PANKAJ JAIN, J. (Oral)

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.222 dated 27.12.2022, registered for the offence punishable under Section 379-B of IPC (Section 411 of IPC added later on) at Police Station Division No.2, District Pathankot.

2. Counsel for the petitioner has relied upon order dated 05.12.2023 passed in CRM-M-8038-2023, whereby co-accused who is similarly situated namely Amit Kumar @ Mittu has been granted bail observing as under:-

1 This petition has been filed under Section 439 Cr.P.C. for grant of regular bail in case F.I.R. No.222 dated 27.12.2022 registered under Sections 379-B IPC, 411 IPC (added later on) at Police Station Division No.2, District Pathankot.

2 FIR was registered on the complaint made by

2023:PHHC:159789

one Vijay Kumar son of Kishan Chand alleging as under :-

“Statement of Vijay Kumar son of Kishan Chand resident of Prem Nagar, Raghunath Mandir, Gali No. 2, Pathankot P.S. Division No. 2, Pathankot District Pathankot aged about 38 years, Mobile No. 88727-80143. Stated that I am the resident of aforementioned address and is having a Tent House shop on Dhaki Road. On 25/12/2022 I was going to New Nehru Nagar from my shop while walking to check cable line connection, when I reached near Mohan Hotel then time was about 03.15 PM then two clean shaven youngsters came from my behind while riding Jupiter Scooty colour white. I was talking to the customer on mobile phone. They slowed down their scooty and pillion rider snatched away the phone in-touch with my ear. I followed the scooty but I could not chase them nor I could read the number. Lateron I came to know number of Jupiter scooty was PB-35-A-8663 colour white which was driven by Sahil son of Rajesh resident of Model Town and pillion rider Amit Kumar @ Mittu son of Balbir Kumar resident of Angooran Wala Bagh snatched my mobile and went away. I tried to search on my own but they could not be found. I was coming to inform you and you met me. Appropriate legal action be taken against them. Statement written, heard and is correct. Sd/- aforementioned Vijay Kumar Attested Mahinder Singh ASI P.S. Division No. 2 Pathankot.”

3 Custody certificate dated 04.12.2023 has been filed. The same is taken on record.

4 Learned counsel for the petitioner submits that it is a case of false implication and the same is evident from the fact that the number of the scooty was later on changed during the course of investigation.

2023:PHHC:159789

5 Learned State counsel submits that in the supplementary statement was made by the complainant on the same day and thus it is highly unlikely that the same can be termed to be false implication.

6 Be that as it may, the petitioner is in custody for more than 11 months and 11 days. Challan already stands presented and thus there can not be any apprehension that the petitioner shall tamper with the evidence. The petitioner has clean antecedents.

7 Learned State counsel on instructions from Investigating Officer is not in a position to dispute the aforementioned factual assertions based on record.

8 I have heard learned counsel for the parties and have gone through the records of the case.

9 Without commenting on the merits of the case and considering the incarceration suffered by the petitioner, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

10 Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

3. Counsel for the State has however opposed the bail plea of the petitioner submitting that the petitioner has criminal antecedents and apart from that, he was booked for offence punishable under Section 174-A in FIR No.77/2022 dated 09.07.2022, after he was declared as 'proclaimed offender'.

4. Faced with the situation, counsel for the petitioner submits that the petitioner has already suffered for the same and the said FIR

2023:PHHC:159789

stands concluded vide order dated 21.02.2023 passed by JMIC, Pathankot wherein the petitioner though convicted was sentences to already undergone.

5. Without further commenting on the merits of the case and keeping in view the incarceration suffered by the petitioner and the nature of allegations levelled in the FIR, the present petition is allowed.
6. Keeping in view the parity and the incarceration already suffered by the petitioner, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.
7. Needless to say nothing recorded herein shall be construed to be an expression of an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

13.12.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No