

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-55487-2022

Date of decision : 09.05.2023

Sumit Rathee

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Parveen Sharma, Advocate
for the petitioner.

Ms.Upasana Dhawan, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

1. This is the second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.746 dated 05.11.2020 registered under Sections 61 and 72F of the Punjab Excise Act, 1914 (Haryana Amendment Bill, 2020) (Sections 272, 328, 420, 467, 468, 471, 120-B IPC and Section 72-A of the Punjab Excise Act, 1914 have been added later on) at Police Station City Sonipat, District Sonipat.

2. Learned counsel for the petitioner has submitted that in the present case, on the basis of secret information, two persons were apprehended at the spot, i.e. Amit and Sachin, from whom illegal liquor was seized. The third accused, i.e. Amit Khatri was able to run away from the spot. It is submitted that the petitioner was not named in the FIR nor any recovery has been effected from him. It is also submitted that the petitioner has been implicated on the basis of disclosure statement of Sachin and even after the recording of the said disclosure statement, no recovery has been

effected from the present petitioner. It is further submitted that Amit Khatri, who was also there in the car although he managed to run away, has already been granted the concession of regular bail by a coordinate Bench of this Court vide order dated 18.11.2021. It is stated that the petitioner has been in custody since 24.05.2022 and there are 22 prosecution witnesses and out of them, 3 witnesses have been examined, thus, the trial is likely to take time. It is submitted that the petitioner had earlier filed a bail petition which was dismissed as withdrawn on 21.09.2022 with liberty to file a fresh petition after annexing all the relevant documents. It is further submitted that the present petition has been filed after annexing all the relevant documents and the present petition, thus, in effect is the first petition.

3. Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the petitioner is involved in 10 other cases. It has also been submitted that as per the disclosure statement of Sachin, illegal / spurious liquor had been taken from the present petitioner to be sold further. Other facts have, however, not been disputed.

4. Learned counsel for the petitioner, in rebuttal, 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*** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. 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. A perusal of the FIR would show that the petitioner has not been named in the FIR and no recovery has been effected from the petitioner. The car in which illegal / spurious liquor was being carried was apprehended and in the said car, co-accused of the petitioner, i.e. Sachin, was apprehended and other co-accused namely, Amit son of Krishana, managed to flee from the spot. The petitioner was neither named in the FIR nor was apprehended at the spot. Co-accused of the petitioner namely Amit Khatri, who managed to run away from the spot, has been granted the concession of regular bail by a coordinate Bench of this Court, vide order dated 18.11.2021 passed in CRM-M-29423-2021. The petitioner is sought to be implicated solely on the basis of disclosure statement of Sachin and even after recording of said disclosure statement of Sachin, no recovery has been effected from the petitioner. The petitioner has been in custody since 24.05.2022 and there are 22 prosecution witnesses and out of them, 3 witnesses have been examined, thus, the trial is likely to take time.

7. Keeping in view the above said facts and circumstances and also in view of the law laid down in ***Maulana'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

8. 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.

(VIKAS BAHL)
JUDGE

May 09, 2023
Davinder Kumar

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