

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-60166-2022

Date of decision : 05.01.2023

Deepak Kumar

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Raj Mohan Singh, Advocate and
Ms.Upasana Gandhi, Advocate
for the petitioner.

Mr.Rajneesh Chadwal, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is the second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.210 dated 24.02.2022 registered under Sections 379-A, 34 IPC at Police Station Barwala, District Hisar.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 25.02.2022 and the investigation is complete and the challan has already been presented and there are 12 witnesses, out of which, only 2 have been examined and thus, the trial is likely to take time. It is further submitted that in the present case, the allegations in the FIR are with respect to snatching of mobile phone of the complainant Lilakanth Thakur and said mobile phone has been recovered from the co-accused Raju @ Bunty and not from the present petitioner. It is stated that although the motor cycle has been recovered from the present petitioner but the same is not alleged to have been stolen. It is further stated

that earlier bail application of the petitioner was withdrawn at that stage on 24.05.2022 and thereafter a period of more than 7 months has elapsed and 10 witnesses are yet to be examined. Reference has also been made to the zimni orders to show that vide order dated 16.08.2022, summons issued to PW Leela Kant were received back unserved and thereafter fresh summons were issued for 26.10.2022 and on 26.10.2022 although the complainant Leela Kant was served but he had not appeared and the case was adjourned to 09.12.2022 and even on 09.12.2022 no PW was present and the case was adjourned to 07.02.2023. It is submitted that the said circumstance moreso, the custody period, entitles the petitioner to file the present second petition for grant of regular bail.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the petitioner, along with 2 other co-accused, had snatched the mobile phone of the complainant and the said 3 persons were going on a motor cycle which has been recovered from the present petitioner. It is further submitted that the petitioner has been named in the FIR and the petitioner is involved in one other case.

Learned counsel for the petitioner, in rebuttal, has submitted that the petitioner has been granted concession of bail in the said case 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*** 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.”

This Court has heard learned counsel for the parties and has perused the paper book.

Keeping in view the above said facts and circumstances moreso, the fact that the petitioner has been in custody since 25.02.2022 and the investigation is complete and the challan has already been presented and out of 12 witnesses, only 2 have been examined and thus, the trial is likely to take time and also the fact that recovery of mobile phone, which had been alleged to have been stolen, has not been effected from the present petitioner and also the fact that as per zimni orders, the complainant had not appeared in spite of being served on 26.10.2022 and on 09.12.2022 no prosecution witness was present and the case has been adjourned to 07.02.2023 and also in view of 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 case.

However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

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

January 05, 2023
Davinder Kumar

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