

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M No.23930 of 2023 (O&M)
Date of decision: 08.05.2024

Basant Kumar @ Basanta @ Fauji @ Mithu
....Petitioner
Versus
State of Punjab
....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. S.S. Rana, Advocate
and Mr. Arvind Kumar Sharma, Advocate
for the petitioner.

Mr. Surya Kumar, AAG, Punjab.

NAMIT KUMAR J. (Oral)

1. Prayer in this 2nd petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.0115 dated 21.11.2022, registered under Sections 379-B, 120-B IPC (Section 201 and 394 IPC added later) at Police Station City Morinda, District Ropar.
2. Learned counsel for the petitioner submits that as per the allegations in the FIR, on 15.11.2022 the complainant Davinder Dutt was going from his house to Kainaur on his scooter bearing registration No.PB-71-B-8023 and at about 2:30 PM, when he reached near Channi Medical Store, Main Bazar Morinda, a person wearing white colour Kamiz-Pajama and black colour Jacket took lift from him by stating that leave him at Saheri. He was also having Parna on his head. A lady



and another person present there told the complainant that he is a great Saint who is doing the Kar-Sewa in Gurudwara Sahib, on which he asked the said person to sit on the rear seat of his scooter for leaving him to village Saheri and when they reached near Gurudwara Sahib of village Saheri, the said person asked him to leave him near Bus Stand Saheri, where the aforesaid lady and person who were present near Channi Medical Store along with three unknown persons on two motorcycles were present. All of them caught hold of him and brought him to Bus Stand Saheri. He became unconscious and when he regained consciousness, the gold chain along with locket worn by him around his neck, gold Karra and two gold rings worn by him in his hands were found missing. The said persons snatched his above said gold ornaments by giving him beatings. Thereafter, on the basis of the statement made by complainant Davinder Dutt, the impugned FIR has been registered.

3. Learned counsel for the petitioner inter alia contends that the petitioner is innocent and he has been falsely implicated in the present case. He further submits that the petitioner has not been named in the FIR and his name surfaced in the disclosure statement of co-accused Fauji, who has already been granted regular bail by this Court vide order dated 13.03.2024, passed in CRM-M No.5311 of 2023. He contends that the petitioner is in custody for the last 01 year, 04 months and 18 days. Lastly, he submits that the investigation in the present case is complete; charges have been framed and all the prosecution



witnesses have been examined and the case before the trial Court is now fixed for 08.05.2024, for defence evidence and the conclusion of the trial is likely to take some time and no fruitful purpose would be served by detaining the petitioner behind the bars.

4. Per contra, learned counsel for the State while placing on record the custody certificate dated 07.05.2024, has opposed the prayer for grant of regular bail to the petitioner. He further submits that petitioner is a habitual offender and he is involved in as many as 25 other FIRs registered under the Excise Act, therefore, he does not deserve the concession of regular bail.

5. Refuting the above contention of the learned State counsel, learned counsel for the petitioner contends that in all the other Excise cases, the details of which is given in document (Annexure P-4), the petitioner has either been acquitted or is on bail. Learned counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court in ***“Maulana Mohd. Amir Rashadi Vs. State of U.P. and another”***, **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



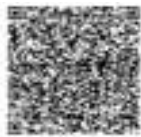
circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

6. I have heard learned counsel for the parties and perused the record.

7. Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 01 year, 04 months and 18 days; investigation is complete; charges have been framed; all the prosecution witnesses stands examined; co-accused of the petitioner namely Fauji, is already released on bail; the petitioner is either acquitted or released on bail in all the other FIRs registered under the Excise Act and conclusion of the trial is likely to take some time, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate. However, in addition to conditions that may be imposed by the trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions: -

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence similar to the one alleged in the present case.
- (v) The petitioner shall deposit his passport, if any with the trial Court.

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- (vi) The petitioner shall give his mobile number to the police authorities and shall not change his mobile number without prior permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by the trial Court, the prosecution shall be at liberty to move an application for cancellation of bail of the petitioner.

(NAMIT KUMAR)
JUDGE

08.05.2024

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No