

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-59999-2023(O&M)
Date of decision : 02.04.2024

Prince

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: *HON'BLE MR.JUSTICE VIKAS BAHL*

Present: Ms.Neeru Bansal, Advocate
for the petitioner.

Mr.Amandeep Joshi, DAG, Haryana.

VIKAS BAHL, J.(ORAL)

CRM-11424-2024

1. This is an application under Section 482 Cr.P.C. for amendment of head note and prayer clause of CRM-M-59999 of 2023.
2. For the reasons stated in the application, the application is allowed and the head note and prayer clause of the petition is amended and in stead of Section 312 IPC mentioned in the head note and prayer clause, Section 212 (1) IPC, be read.
3. Registry is directed to do the necessary corrections in the head note and prayer clause of the petition.

CRM-M-59999-2023

1. This is the third petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.139 dated 05.08.2020 registered under Sections 25, 27, 54, 59 of the Arms Act and Sections 302 and 34 IPC (Sections 201, 120-B and 212(1) IPC added later on) at Police Station

Moohana, District Sonipat.

2. Learned counsel for the petitioner has submitted that the petitioner has been in custody since 11.08.2020 (more than 3 years and 7 months) and the investigation is complete and the challan has already been presented. It is further submitted that the last bail application filed by the petitioner was dismissed as withdrawn on 08.05.2023 at that stage with the direction to the trial Court to expedite the trial. Learned counsel for the petitioner has referred to the zimni orders dated 10.08.2023, 01.09.2023, 25.09.2023, 16.10.2023 and 08.11.2023 (Annexures P-8 to P-12) to show that on the said dates, no prosecution witness was present in spite of there being a specific order passed by this Court on 08.05.2023 directing the trial to be expedited. It is stated that even now 8 witnesses are yet to be examined and thus, the trial is not likely to conclude in near future and on the basis of custody of the petitioner, the petitioner deserves the concession of regular bail. It is further stated that in the present case, there is no eye witness and the entire case is based on circumstantial evidence and the FIR has been registered by the complainant, who is not an eye witness, on the basis of suspicion. It is submitted that there is no recovery of any pistol from the petitioner, although as per the disclosure statement of the petitioner, the petitioner was armed with a pistol. It is argued that even as per the case of the complainant, the petitioner had no motive in the present case to kill the deceased. It is further argued that the material witnesses have been examined and thus, there is no possibility of the petitioner influencing any witness and that Sanjay, who was also named in the FIR, has been granted regular bail vide order dated 22.09.2022 passed in CRM-M-38498-2022.

3. Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that although there is no eye witness but as per the case of prosecution, the petitioner is one of the persons, who was carrying pistol and who had also fired on the waist of the deceased. It is further submitted that the petitioner is involved in one more case. 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. The petitioner has been in custody since 11.08.2020 (more than 3 years and 7 months) and 8 witnesses are yet to be examined and thus, the trial is not likely to conclude in the immediate future. The last bail application of the petitioner was dismissed as withdrawn at that stage on 08.05.2023 and this Court vide the said order had directed the trial Court to expedite the trial. A perusal of the zimni orders dated 10.08.2023,

01.09.2023, 25.09.2023, 16.10.2023 and 08.11.2023 (Annexures P-8 to P-12) would show that no prosecution witness was present much less examined on the said dates. There is no eye witness in the present case and the case is based on circumstantial evidence and the FIR has been got registered by Amit, son of the deceased on the basis of suspicion. No recovery of any pistol has been effected from the petitioner. Sanjay, co-accused of the petitioner, who was also named in the FIR, has been granted regular bail vide order dated 22.09.2022 passed in CRM-M-38498-2022. Five material witnesses have also been examined and thus, the question of the petitioner influencing the said witnesses does not arise.

7. Keeping in view the above said facts and circumstances, 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. 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.

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.

(VIKAS BAHL)
JUDGE

April 02, 2024
Davinder Kumar