

1
Avtar Singh Vs. State of Haryana

HRPK-01-003836-2022



Presented on : 10.10.2022
Registered on : 10.10.2022
Decided on : 17.10.2022
Duration : 0 year, 0 month, 07 days

**IN THE COURT OF
Additional Sessions Judge
at Panchkula.
(Presided Over by Sunil Kumar-II)
UID No.HR-0233**

BA/1302/2022

Avtar Singh @ Raju, aged about 24 years S/o Sh. Amrik Singh, R/o Village Behra, P.S. Dera Bassi, District- Mohali, Punjab.

(Now confined in Central Jail, Ambala).

.....Applicant/Accused.

VERSUS

State of Haryana Respondent.

FIR No.78 dated 15.02.2022
Under Sections-379-A, 34 of IPC.
Police Station :Chandimandir, Panchkula.

BAIL APPLICATION UNDER SECTION-439 OF CR.P.C.

Present: Sh. Arvinder Arora, Advocate for the applicant/accused.
 Sh. Rajbir Singh, Ld. Public Prosecutor.

ORDER:

The instant application for bail under Section-439 of Cr.P.C. has been filed by the applicant/accused named above with the averments that he has been implicated falsely in the instant case. It is clear from the contents of the FIR that the case was registered against unknown persons and the

(Sunil Kumar-II)
ASJ, PKL 17.10.2022

applicant/accused is not named in the FIR. There is a delay of one day in registration of the FIR. The applicant/accused is in custody since 15.02.2022 and no useful purpose would be served by keeping the applicant/accused in further custody as the trial of the case would take long time. The applicant/accused filed first application for regular bail and the same was dismissed by the Court on 10.03.2022. The applicant/accused filed regular bail application before the Hon'ble Punjab and Haryana High Court, Chandigarh and the same was dismissed as withdrawn vide order dated 25.04.2022. The second regular application for bail filed by the applicant/accused before the Hon'ble Punjab and Haryana High Court, Chandigarh was dismissed as withdrawn vide order dated 01.09.2022. Now the complainant and the eye-witness have been examined by the prosecution. The complainant and eye-witness have not supported the prosecution case. The applicant is permanent resident of District Mohali and there is no likelihood of his absconding or tampering with evidence. The applicant/accused undertakes to appear on each and every date of hearing. He would not tamper with the evidence of the prosecution. The applicant/accused undertakes not to misuse the concession of bail if granted by the Court. It is on the above grounds that the applicant/accused has prayed for regular bail under Section-439 of Cr.P.C.

2. On notice, reply to the bail application through the learned Public Prosecutor has been filed. In the reply, it is stated that the instant FIR

has been registered on the basis of the complaint of one Sakir Ali who alleged that on 14.02.2022, he and his elder brother Jamshed were returning home on foot from Sector-21, Panchkula. It was around 11:00 PM when they reached near Ashiana, Sector-28, Panchkula. Meanwhile, two young boys came from behind on a motorcycle bearing registration No.HR 99 YV/2433T. The boy on the seat of the *pillion* rider snatched the mobile phone of the complainant bearing SIM No.6239626922 and both the boys ran away on the motorcycle. After registration of the FIR under Section-379A, 34 of IPC, investigation was initiated. The applicant/accused Avtar Singh was duly arrested on 15.02.2022. The other boy in his company was also arrested but he was found to be juvenile-in-conflict with law. The motorcycle as well as the snatched mobile phone were recovered from applicant/accused and the juvenile. Said items were taken into police custody. The complainant identified the applicant/accused. On completion of the investigation, the report under Section-173 of Cr.P.C. was filed in the Court. No other criminal case is registered against the applicant/accused and no application for bail filed by him is pending in any Court. It is stated that the first application for bail filed by the applicant/accused was dismissed by the learned Sessions Judge, Panchkula on 10.03.2022. Second application for bail filed by the applicant/accused was dismissed by the Hon'ble Punjab and Haryana High Court, Chandigarh on 23.03.2022. The third application for bail filed by the applicant/accused was dismissed by the learned Sessions

Judge, Panchkula on 25.04.2022 whereas the fourth application for bail filed by the applicant/accused was dismissed by the Hon'ble Punjab and Haryana High Court, Chandigarh vide order dated 01.09.2022. It is on the above grounds that the application for bail under Section- 439 of Cr.P.C. is sought to be dismissed.

3. I have gone through the contents of the bail application as well as the reply filed to the same thoroughly and carefully. Arguments led by learned counsel for the applicant/accused as well as learned Public Prosecutor have been heard at length by me.

4. It is not in dispute that the applicant/accused is in custody since 15.02.2022. In the reply to the application for bail, it is stated that no other criminal case is registered against the applicant/accused. The applicant/accused is a permanent resident of District- Mohali (Pb.). Since the applicant/accused is a permanent resident of given address and he is a person without any criminal antecedents, there is no reasonable likelihood of the applicant/accused escaping from the process of law. The learned counsel for the applicant/accused has attached with the application for bail the copies of the orders whereby the earlier applications for bail filed by the applicant/accused have been dismissed. A perusal of the order dated 10.03.2022 would reveal that the first application for bail filed by the applicant/accused was dismissed by the learned Sessions Judge, Panchkula primarily on the ground that the complainant is yet to be examined and the

applicant/accused may try to influence him if application for bail is allowed. A perusal of the order dated 23.03.2022 would reveal that application for bail filed by the applicant/accused was dismissed as withdrawn by the Hon'ble Punjab and Haryana High Court, Chandigarh vide order dated 23.03.2022. A perusal of the order dated 25.04.2022 would reveal that the application for regular bail filed by the applicant/accused was dismissed by the learned Sessions Judge, Panchkula again on the ground that the complainant is yet to be examined and the applicant/accused may influence the witness if granted bail. A perusal of the order dated 01.09.2022 would show that the application for bail filed by the applicant/accused was dismissed as withdrawn by the Hon'ble Punjab and Haryana High Court, Chandigarh.

5. The learned counsel for the applicant/accused has attached with the application of bail certified copies of the depositions of the complainant Sakir Ali and his brother Jamshed. The evidence of the complainant Sakir Ali has been recorded on 06.10.2022 wherein he has specifically stated that there was darkness at that time and he could not see the accused persons. He specifically deposed that the accused person present in the Court never snatched the mobile phone from him and no mobile was recovered in his presence from the accused present in the Court. The deposition of Jamshed PW-2 is to the effect that the accused present in the Court never snatched the mobile phone from his brother and no mobile was recovered from him in his

6
Avtar Singh Vs. State of Haryana

presence. In other words, the complainant as well as the eye witness have not supported the evidence of the prosecution from any angle. In the light of above quality of the evidence of the complainant and the eye-witness, it would not be justiciable to keep the applicant/accused behind the bars any longer, especially when the applicant/accused is already in custody for a period of more than 10 months.

6. For the reasons recorded above, the application for bail under Section-439 of Cr.P.C is allowed and the applicant/accused Avtar Singh is admitted to bail subject to furnishing personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of this Court. Requisite personal bond and surety bond are not furnished today. Let the case file be tagged with the main trial file pending disposal before this Court.

Announced in open court.
Dated : 17.10.2022

(Sunil Kumar-II),
Addl. Sessions Judge,
Panchkula. UID : HR0233

Note:-Each of the -6-pages of this order has been checked and signed by the undersigned.

(Bhupinder)

(Sunil Kumar-II),
Addl. Sessions Judge,
Panchkula. UID : HR0233

(Sunil Kumar-II)
ASJ, PKL 17.10.2022

7
Avtar Singh Vs. State of Haryana

CNR No: HRPK-01-003836-2022

BA/1302/2022

Present: Sh. Arvinder Arora, Advocate for the applicant/accused.
Sh. Rajbir Singh, Ld. Public Prosecutor.

Arguments on the application for bail under Section-439 of Cr.P.C. heard. Order pronounced. Vide my separate detailed order of even date, the application for bail under Section-439 of Cr.P.C. filed by the applicant/accused is **allowed**. Requisite bonds are not furnished today. Let the case file be tagged with the main trial file pending disposal before this Court.

Announced in open court.
Dated : 17.10.2022

(Bhupinder)

(Sunil Kumar-II),
Addl. Sessions Judge,
Panchkula. UID : HR0233

(Sunil Kumar-II)
ASJ, PKL 17.10.2022