

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-44474 of 2019

Date of Decision:-28.02.2020

Parveen @ Lakha Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Tapan Kuma Yadav, Advocate
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

JASGURPREET SINGH PURI J.(Oral)

Petitioner-Parveen @ Lakha Kumar has filed the present petition under Section 439 Cr.P.C. for grant of regular bail pending trial in case FIR No.119 dated 18.4.2018, under Sections 114, 302, 34 IPC and Section 25, 54 of Arms Act, registered at Police Station City, Rewari.

Lerned counsel for the petitioner has submitted that in the present case the FIR was registered on 18.4.2018 and he was taken into custody on 28.4.2018. He has further submitted that in the present case after completion of investigation the challan was presented on 19.7.2018 and the charges were framed on 01.12.2018. Learned counsel has further submitted that despite the framing of charges on 01.12.2018, witnesss have

not been examined and even the complainant and the cited witnesses, are not appearing despite warrants being issued against them. He has referred to the order passed by this Court on 08.11.2019 whereby the trial Court was directed to ensure that those who are shown to be eye witnesses of the occurrence as per the case of the prosecution, are examined at the outset and to file a report. He has further pointed out to the orders which have been passed by the trial Court after framing of the charges. From these orders, he has stated that despite repeated summons and warrants issued not only to the complainant but also to the cited witnesses they have not appeared till date.

Learned counsel for the petitioner has further submitted that on the merits of the case even otherwise also as per perusal of the FIR, it would show that the main accused was Vipul and bare reading of the contents of the FIR would show that three shots were fired towards the deceased and all of them were fired by Vipul and the petitioner has been shown to be alongwith said Vipul. He has stated that he has falsely been implicated in the present FIR and even otherwise also no role has been attributed to the petitioner as no injury has been attributed to him. Learned counsel for the petitioner has further relied upon the bail orders which have been passed qua the co-accused Amit and Dharampal, who have been enlarged on bail by this Court.

Per contra the learned State counsel on instructions from ASI Anil Kumar stated that in the present case the petitioner was involved in a serious offence and despite efforts being made for examining the material

witnesses, the same have not been made because they are not cooperating and coming forward for recording their depositions. So far as the custody period of the petitioner is concerned, the learned State counsel has not disputed that the petitioner is in custody since 28.4.2018 and that the charges were framed on 01.12.2018. Learned State counsel has opposed the grant of regular bail to the petitioner on the ground that the offences contained in the FIR are serious in nature. He has also stated that there were other two cases against the petitioner, however, the same were under Sections 323 and 325 IPC, which although were not serious in nature.

I have heard learned counsel for the parties and perused the records.

It is not disputed that the petitioner is in custody for almost two years i.e. from 28.4.2018 and the trial Court had framed the charges on 01.12.2018 and thereafter inspite of repeated adjournments and repeated summons and warrants issued not only to the cited witnesses but also to the complainant, namely, Sunder, but the same have not been examined because they have not come to depose. Vide orders dated 08.11.2019, 15.1.2020 and 18.2.2020, this court had directed the trial Court to send the report with regard to the zimni orders, which were passed with regard to examination of the witnesses. A report dated 17.2.2020 has been received from the Additional District & Sessions Judge, Rewari, which states that on 15.11.2019 the case was fixed for prosecution evidence andailable warrants were issued against the prosecution witnesses, namely, Sunder, Phool Singh and Leela but the same were received back unexecuted and

they were ordered to be summoned again through warrants of arrest for 12.12.2019 through the DSP concerned. Thereafter, on 12.12.2019 bailable warrants issued against the aforementioned prosecution witnesses received back unexecuted and they were again ordered to be summoned through warrant of arrest through the concerned DSP for 04.1.2020. On 04.1.2020 warrant of arrest issued against the aforesaid prosecution witnesses received back unexecuted and they were again ordered to be summoned through warrant of arrest through the concerned DSP for 04.2.2020. On 04.2.2020 warrant of arrest against the aforementioned witnesses received back unexecuted and they were again ordered to be summoned through warrant of arrest through the concerned DSP for 07.3.2020. A perusal of the report, which has been submitted by the Additional District & Sessions Judge, Rewari would show that neither the complainant nor the witnesses have been examined despite warrants being issued against them. So far as the pendency of other cases against the petitioner is concerned, the said cases according to learned State counsel were only under Sections 323 and 325 IPC and therefore not of a serious nature. Since the progress of the case before the trial Court is not progressing at all and the incarceration period of the petitioner is approximately two years, it will be necessary and expedient to consider the bail application in the context of present facts and circumstances of this case. After going through the report of the Additional District & Sessions Judge, Rewari dated 17.2.2020 and after hearing learned counsel for the parties, I deem it fit and appropriate that the petitioner shall be admitted to bail in the present case. Consequently, the

present petition is allowed. It is ordered that the petitioner shall be released on regular bail on his furnishing bail bond/surety to the satisfaction of the learned trial Court.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

February 28, 2020
Vijay Asija

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No