

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

213

CRM-M-27391-2021

Date of Decision : December 09, 2021

HAWA SINGH

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. J.C.Malik, Advocate for
Mr. Balkar Singh, Advocate
for the petitioner.

Mr. Ranvir Singh Arya, Addl. Advocate General, Haryana.

Mr. Sagar Aggarwal, Advocate
for the complainant.

Through Video Conferencing

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.450 dated 7.7.2018 under Sections 148, 149, 323, 326, 307, 506 and 120-B IPC and under Sections 25/54/59 of the Arms Act, 1959 registered at Police Station Gharaunda, District Karnal.

The learned counsel for the petitioner has submitted that although the present petition is a sixth petition for grant of regular bail to the petitioner but in view of the circumstances of the present case, he may be considered for the grant of regular bail. He has submitted that his first bail application was dismissed as withdrawn on 5.11.2019. Thereafter the petitioner was released on interim bail on 3.4.2020 for 1½ months in

view of his medical condition and thereafter he had surrendered in time. Thereafter his bail application was dismissed as withdrawn at that stage on 27.5.2020. Again he filed bail application which was dismissed as withdrawn on 12.6.2020. He had again filed bail application before this Court which was, however, dismissed on 21.9.2020. Learned counsel has submitted that now after more than one year, he has again filed the present bail petition. Learned counsel has further submitted that now there are change in circumstances due to which the present successive bail application is maintainable. He has submitted that firstly the petitioner is in custody from 15.7.2018 which is more than three years that he is facing incarceration and he was granted interim bail for 1½ months earlier by this Court and he had surrendered in time. Secondly after initial examination of the complainant as a prosecution witness, an application under Section 319 Cr.P.C. was filed and allowed due to which the trial has started *de novo* and the complainant is again to be examined in view of the application under Section 319 Cr.P.C. and in this way the trial has been delayed for no fault of the petitioner and thirdly, the medical condition of the petitioner has deteriorated very fast and the petitioner is 71 years old man. Earlier the petitioner was granted interim bail on medical grounds and now he has attached the certificate of the Medical Officer, District Prison, Karnal to show that the petitioner who is of 71 years of age is suffering from multiple number of ailments and, therefore, in view of his deteriorated medical condition also he may be considered for the grant of regular bail.

Learned counsel for the petitioner has further submitted that it is a case where a cross fight had taken place between the parties and as per the allegations the petitioner had fired at the other party. During investigation, the challan was presented against the petitioner and his two sons and the other persons were declared as innocent. However, the police did not register any cross FIR but at the same time, a complaint was also filed before the learned Magistrate in this regard which is still pending. He submitted that the other party had connived with the police and they were the aggressor party. So far as the two co-accused, namely, Pawan and Parveen @ Binna are concerned, they have already been granted bail by this Court. He has further submitted that the petitioner has clean antecedents and is not involved in any other case and even though the other party was the aggressor party, the petitioner has faced incarceration for more than three years and the trial is still to commence from the threshold.

On the other hand, Mr. Arya, learned Addl. Advocate General, Haryana has submitted that it is correct that the petitioner is in custody from 15.7.2018 which is more than three years and earlier the petitioner was granted interim bail on medical grounds and he surrendered in time. He has further submitted that it is also correct the the petitioner is not involved in any other case. He has also submitted that it is correct that after the decision of the application under Section 319 Cr.P.C., the trial of the case has started *de novo* and no prosecution witness has been examined. He further submitted that in pursuance of the directions issued by this Court on 11.11.2021 with regard to the

verification of the medical condition of the petitioner, status report/affidavit dated 6.12.2021 has been filed by Assistant Superintendent of Police, Indri, Karnal. The status report is, hereby, taken on record. As per the affidavit, the petitioner who is 71 years of age is a known case of Chronic Obstructive Pulmonary Disease (COPD) and Chronic Heart Disease with Hypertension (Left Ventricular Hypertrophy with poor window) with difficulty in breathing (occasional Acute Exacerbations) with two medullary cysts in left kidney measuring 14.0 mm* 14.0 mm* in mid polar region in left kidney with pain abdomen with general weakness with difficulty in walking with lower back pain and swelling below eyes (bilateral) and at present he is on medicines as advised by specialist Doctors at PGIMER Chandigarh/KCGMCH, Karnal but is suffering from multiple ailments weakness and senile disorders and a certificate of the Medical Officer, District Prison, Karnal has also been attached alongwith the affidavit as Annexure R-1. The learned State counsel has submitted that so far as the medical condition of the petitioner is concerned, there can be no doubt that he is suffering from multiple ailments which are stated above. He has, however, submitted that since the gun shot injuries emanated from the petitioner, the matter was serious in nature and the licenced weapon was also recovered from him.

Mr. Sagar Aggarwal, Advocate has also caused appearance on behalf of the complainant and has opposed the grant of regular bail to the petitioner on the ground that the petitioner had given a gun shot injuries from his rifle which caused multiple grievous injuries. He has

further submitted that although the other two co-accused have been granted bail by this Court but since the petitioner was the main accused, he has opposed the grant of regular bail to the petitioner.

I have heard the learned counsels for the parties.

The custody of the petitioner which is more than three years is not in dispute. It is also not in dispute that the petitioner is 71 years of age and is under trial prisoner. It is also not disputed that the petitioner is not involved in any other case. It is also not disputed by any of the parties that the trial has got delayed in view of the fact that after the decision of application under Section 319 Cr.P.C., the trial has started *de novo* and as of today even no prosecution witness has been examined. So far as the role of the petitioner is concerned, it is yet to be ascertained as to whether the petitioner was the aggressor party or the injured was the aggressor party. The trial of the case has been delayed. The apprehension expressed by the State in their affidavit that in case the petitioner is released on bail then he may extend threats to the prosecution witnesses and may hamper the proposed prosecution evidence cannot become a ground for denial of bail to the petitioner in view of the fact that such an averment seems to be mechanical in nature and is not supported by any substantive reasoning apart from the fact that the trial itself has got delayed which cannot go to the detriment of the petitioner. So far as the maintainability of the successive bail application in the present case is concerned, this Court is of the view that the present successive bail application would certainly be maintainable in view of the circumstances which have been mentioned above and especially in view

of the deteriorated medical condition of the petitioner who is 71 years of age and has faced incarceration for more than three years.

Therefore, considering the totality of the facts and circumstances of the present case, this Court deems it fit and proper to grant bail to the petitioner.

Consequently, the present petition is allowed. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

December 09, 2021

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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No