

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

107/2

**CRM-M-30048 of 2021
Date of Decision:20.09.2021**

Aas Mohd.

..... Petitioner

Versus

State of Haryana

..... Respondent

CRM-M-20782 of 2021

Abdulla

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Munfaid Khan, Advocate,
for the petitioner in CRM-M-30048 of 2021.

Mr. Sarfraj Hussain, Advocate,
for the petitioner in CRM-M-20782 of 2021.

Mr. Saleem Ahmad, Advocate,
for the complainant in CRM-M-30048 of 2021.

Mr. Rajesh Bhateja, Advocate,
for the complainant in CRM-M-20782 of 2021.

Mr. Neeraj Poswal, AAG, Haryana

AMOL RATTAN SINGH, J. (ORAL)

CRM-M-30048 of 2021

On July 30, 2021 the following order had been passed by this court:-

“Case heard via video conferencing.

By this petition, the petitioner seeks the concession of anticipatory bail, upon FIR no.813, dated 15.10.2019, having been registered at Police Station Sadar, Nuh, alleging therein the commission of offences punishable under Sections 148/149/323/307 of the IPC and Sections 25/54/59 of the Arms Act, 1959.

Learned counsel for the petitioner points to the FIR itself to submit that though the petitioner is named as one of the persons who indulged in stone pelting along with his other family members, the gunshot is stated to have been fired by one Abdulla son of Badlu.

Notice of motion.

Mr. Neeraj Poswal, learned AAG, Haryana, accepts notice at the asking of the court.

Upon learned State counsel pointing that even Waseem and Farzana had received gunshot injuries, Mr.Khan, learned counsel for the petitioner, points to the affidavits stated to be executed by the aforesaid two persons (Annexure P-3 collectively), stating to the effect that the petitioner, Aas Mohd., was not the person who had fired the gunshot and that he and six others were actually not present at the spot at the time of the dispute.

Mr.Rakesh Gupta, learned counsel appearing for the complainant, on the other hand submits that the said affidavits are wholly forged and therefore no reliance should be placed upon them.

Having considered the matter, with it also stated that the petitioner is about 73 years of age, with his photograph also annexed with the petition, without making any comment at this stage on the actual merits of the case, the petitioner is directed to join investigation within one week and upon him so joining

if he is sought to be arrested, he shall be released on bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Ilaqa Magistrate.

He shall also comply with all conditions stipulated in Section 438(2) of the Cr.P.C.

If the investigating officer does not actually join the petitioner in investigation, he would appear before the learned Ilaqa Magistrate immediately, who would then summon the arresting officer and direct him to join him in investigation, in terms of the order of this court.

A gazetted officer is directed to file a detailed reply to each paragraph of the petition, also obviously stating as to whether the petitioner has joined investigation in the meanwhile or not.

Adjourned to 13.9.2021.”

Thereafter, on a reply filed to the petition by the DSP, Tauru, District Nuh, dated 09.09.2021, learned State counsel had submitted that supplementary statements were made by Farzana, Washim and Dinu, by which all three of them had implicated the petitioner as also Abdulla to be the persons who had actually fired upon them, with the said statements annexed as Annexures R-1 to R-3 with the reply of the DSP.

He further submits that many gun shot injuries having been received by those who got injured in the occurrence, the country made pistol that was stated to have been used in the occurrence, is still to be recovered, with the petitioner not getting it recovered.

Learned counsel for the petitioner, points to the vernacular version of the disclosure statement allegedly made by the petitioner (in police custody, copy

Annexure R-9), to submit that only a single pistol was said to have been used in the occurrence even as per the said disclosure statement allegedly made by the petitioner (though otherwise denied), and that (as per the statement) he had actually returned the pistol to Abdulla (petitioner in CRM-M-20782 of 2021), and consequently, with the pistol not having been recovered from Abdulla, there is no question of the pistol being recovered at the instance of the petitioner (Aas Mohd.).

Having considered the matter, just because Abdulla had been arrested and has now filed a petition under the provisions of Section 439 of the Cr.P.C., that would not entitle the petitioner to continue to remain on interim bail in my opinion, this petition being one filed under the provisions of Section 438 of the Cr.P.C.

That being so, with fire arm injuries allegedly found to have been received by those on the side of the complainant, I would see no ground to entertain this petition, which is consequently dismissed, with the interim order dated 30.07.2021 vacated.

Learned counsel for the petitioner has now again pointed to the original statements made by Farzana, Washim and Dinu, to the effect that the petitioner was not even present at the spot.

Even having considered that contention again, for the reasons already stated hereinabove, looking at the supplementary statements as have been annexed with the reply of the DSP, I see no reason to continue with this petition.

Obviously, if the petitioner is arrested and he files a petition under the provisions of Section 439 of the Cr.P.C., that would be considered wholly on its

own merits.

Further, all observations made in the context of this petition by this court in any order passed, would not be considered by the trial court at the time when the matter goes to the trial, naturally all such observations having been made only in the context of a petition filed under the provisions of Section 438 of the Cr.P.C.

CRM-M-20782 of 2021

Adjourned to 26.10.2021.

The trial court is directed to examine the material/injured witnesses at the outset.

A copy of this order be also placed on the file of the other connected matter too.

September 20, 2021
dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No