

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-42518-2021 (O&M)

Date of Decision:- 14.10.2021

Ashok @ Baba

.... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Manish Soni, Advocate, for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana,
assisted by SI Narender Hooda.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered against him vide FIR No.583, dated 31.10.2018, Police Station Dharuhera District Rewari, under Sections 302, 34, 506 IPC and Section 25 of Arms Act.
2. The FIR in the instant case was lodged at the instance of Babu Lal wherein it is alleged that on 30.10.2018 when his brother Rambir @ Bagga came out from his house to take milk from him as he used to supply the same, one motorcycle which was being driven by Naresh came there on which another boy was sitting on the pillion seat.

Naresh stopped his motorcycle near them and after taking out a pistol from his shirt fired at complainant's brother Rambir on account of which he fell down. Thereafter the person accompanying Naresh fired shots randomly. When the complainant rushed forward to save his brother, they fired in the air and thereafter ran away on their motorcycle. The complainant's brother succumbed to injuries sustained on account of the fire-arm.

3. Learned counsel for the petitioner has submitted that he is nowhere named in the FIR and that the only person named therein is co-accused Naresh and that he has subsequently been nominated as an accused on the basis of a statement allegedly made by Naresh. It has further been submitted that the police has given a twist to the case inasmuch as while in the FIR it is alleged that Naresh as well as the other person had fired at the deceased from their pistols, but now in the disclosure statement made by Naresh it is being projected that the pistol carried by Naresh was also used by the present petitioner. Learned counsel for the petitioner has further submitted that another co-accused Sanjiv who was also not named in the FIR has already been granted bail by this Court vide order dated 24.2.2021.
4. Opposing the petition, learned State counsel has submitted that the petitioner cannot derive any advantage from the fact that the co-accused Sanjiv had been granted bail inasmuch as Sanjiv is not alleged to have participated in the incident of firing at the deceased and the only role attributed to him was that he had supplied the pistol used in the occurrence and had in fact sold the same to the co-

accused. Learned State counsel has further informed that since the petitioner happens to be involved in one more case for offences under Sections 392 and 457 IPC, no case for grant of bail is made out. Learned State counsel has submitted that in the instant case the pistol recovered from co-accused Naresh as well as the bullet recovered from body were sent to FSL and it has been confirmed that the bullet which was recovered from the body of the deceased was fired from the pistol so recovered and as such since the petitioner was in any case accompanying the co-accused Naresh on the same motorcycle, his complicity is clearly evident even if it is presumed that he had not fired at the deceased. Learned State counsel has however, informed that the petitioner as on date has been behind bars since the last about 2 years and 6 months and that as on date 4 out of the cited 28 PWs have been examined.

5. I have considered rival submissions addressed before this Court.
6. Keeping in view the fact that the petitioner is not named in the FIR and had been nominated on the basis of a disclosure statement made by co-accused the veracity and admissibility of which would be debatable and also the fact that it is from the pistol of co-accused that the bullet recovered from the body of the deceased is found to have been fired, and also the fact that the petitioner has been behind bars for a substantial period of 2 years and 6 months, further detention of petitioner will not serve any useful purpose particularly in view of the fact that only 4 out of the cited 28 PWs have been examined till date. The petition, as such, is accepted and the petitioner is ordered to be

released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned Trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

14.10.2021

Mohan

(GURVINDER SINGH GILL)
JUDGE

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