

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

CRM-M-35356-2020 (O&M)

Date of decision: 20.04.2021

Hari Om

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. R.S. Mamli, Advocate for the petitioner.

Mr. Karan Garg, AAG, Haryana.

H.S. MADAAN, J.

Case taken up through video conferencing.

This petition for regular bail has been filed by petitioner Hari Om, an accused in FIR No.0402 dated 20.08.2020, for an offence under Section 25 of the Arms Act, registered with Police Station City Fatehabad, District Fatehabad.

In nutshell, the prosecution story is that, on 20.08.2020, Hemraj co-accused of the present petitioner Hari Om was apprehended by the police party and a country made pistol of .315 bore along with one live cartridge was recovered from him; he was not holding any license for possession of the pistol as well as cartridge; formal FIR in the matter was recorded; the investigation in the case started, during course of which, it transpired that Hemraj had procured the pistol and live cartridge from the present petitioner; accordingly Hari Om was nominated as an accused in

this case.

Petitioner/accused had filed an application for grant of regular bail before learned Sessions Judge, Fatehabad but his such application was rejected, vide order dated 15.10.2020. As such, he has approached this Court, craving for grant of similar relief, which request is being opposed by learned State counsel and counsel for the complainant.

I have heard learned counsel for the parties besides going through the record.

A perusal of the order passed by learned Sessions Judge, Fatehabad dated 15.10.2020 and written reply submitted on behalf of the State goes to show that the petitioner is involved in 08 more criminal cases; in 03 cases, he is said to have confessed his guilt, whereas, in 01 case bearing FIR No.47 dated 05.04.2016, Police Station Jhunjhunu, District Rajasthan, he is shown to been declared a proclaimed offender. The details of the cases registered against him are as under:-

1. FIR No.624 dated 02.08.2012, under Section 379 IPC, registered at Police Station Hisar City, District Hisar.
2. FIR No.948 dated 25.10.2017, under Section 174-A IPC, registered at Police Station Hisar City, District Hisar.
3. FIR No.19 dated 21.01.2015, under Section 379 IPC, registered at Police Station Saffidon, District Jind.
4. FIR No.82 dated 22.01.2015, under Section 392 IPC, registered at Police Station Hisar City, District Hisar.
5. FIR No.147 dated 08.02.2015, under Sections 498, 301 IPC and Section 25 of the Arms Act, registered at Police Station Hisar City, District Hisar.
6. FIR No.107 dated 08.05.2016, under Sections 382 and 365 IPC, registered at Police Station Singhana, District

Jhunjhunu (Rajasthan).

7. FIR No.266 dated 22.09.2015, under Sections 302, 212, 148 and 149 IPC, registered at Police Station Agroha, District Hisar.
8. FIR No.47 dated 05.04.2016, under Sections 143, 365 and 395 IPC, registered at Police Station Sadar Jhunjhunu, District Jhunjhunu (Rajasthan).

Though, learned counsel for the petitioner has contended that the petitioner has been acquitted in many cases and he has referred to relevant judgment with regard to FIR No.19 dated 21.01.2015; judgment passed in FIR No.147 dated 08.02.2015; FIR No.948 dated 25.10.2017. With regard to judgment in FIR No.948 dated 25.10.2017 under Section 174-A IPC, petitioner Hari Om is shown to have been convicted and sentenced for the reason that he had been declared as proclaimed offender in case FIR No.147 dated 08.02.2015, under Sections 398 and 401 IPC and Section 25 of the Arms Act. As per judgment delivered in FIR No.82 dated 22.01.2015, accused therein including the present petitioner are shown to have been acquitted, vide judgment dated 19.04.2019.

May it be so, although the petitioner is shown to have been acquitted in some of the cases but that does not give rise to the conclusion that he has clean criminal record. As per principles of criminal jurisprudence applicable in this country, the prosecution must prove its charge against the accused beyond a shadow of reasonable doubt and onus to prove the guilt of accused to the hilt is stationary on the prosecution and it never shifts. The burden to prove such guilt of the accused is quite heavy. Many a times, the accused are acquitted of the

charge framed against them, giving them benefit of doubt. It is not that incriminating evidence is not there against such accused but in view of the Court, sometimes the prosecution is unable to prove the guilt of the accused to the hilt by producing enough cogent and convincing evidence. On account of such failure of the prosecution, the accused get acquitted by default but that does not mean that the criminal cases against the accused get vanished in the air. The fact remains that accused was booked in those criminal cases; he was challaned, charge-sheeted and tried for the offences, though, he could finally earn acquittal. From such past criminal record of the petitioner, it can certainly be concluded that he is a habitual criminal and if granted benefit of regular bail, there is every probability of his taking to the path of crime again, resulting in disturbance of peace and tranquility in the society. The apprehension expressed by the State counsel that if granted concession of bail, the petitioner may try to tamper with the prosecution evidence by giving threat or inducement to such witnesses and to abscond even, in the process, delaying the trial, cannot be rejected outrightly. The petitioner being supplier of an illegal pistol and live cartridge to his co-accused has done an act, which is security threat to the common people. As informed by the State counsel, the challan against the accused has been filed and charge has also been framed and now the case is fixed for 30.04.2021 for recording prosecution evidence. The guilt of the accused shall be determined during the trial. Keeping in view the totality of circumstances, no case for grant of regular bail is made out. The petition lacks merit and is dismissed accordingly.

However, the trial Court is directed to make earnest efforts to record statements of prosecution witnesses by giving short adjournments, refusing to grant adjournment except for justifiable reasons, which are to be recorded in the order. The State counsel shall cause appearance of PWs on the date(s) fixed. Of course, no unnecessary adjournment would be asked on behalf of the accused, if trial is to proceed expeditiously. The trial Court is to make earnest endeavor to complete the trial preferably within a period of 06 months from the date of receipt of copy of order there.

Anything said herein above shall not be construed as an expression of opinion on the merits of the case.

20.04.2021

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(H.S. MADAAN)
JUDGE

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