

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

CRM-M-44760-2019 (O&M)

Date of Decision:- 1.7.2021

Devender

.... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Yogeshwar Dayal Kaushik, Advocate, for the petitioner.

Ms. Sheenu Sura, DAG, Haryana,
assisted by ASI ASI Phool Singh.

(Proceedings conducted through video conferencing)

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.140, dated 16.8.2019, Police Station BPTP, District Faridabad, under Sections 398, 401 IPC and Section 25 of Arms Act.
2. The FIR in question was lodged at the instance of ASI Surender Singh wherein it is alleged that during the course of patrolling a secret information was received to the effect that 4 young boys were carrying arms were standing on the road near village Faridpur for the purpose

of looting commuters/passersbyes. Upon receipt of said information the police party headed towards the nominated place and saw 4 young boys who were carrying weapons. The said boys were nabbed by the police; one of the said persons disclosed his name as Umesh Kumar and was found carrying a country made 315 bore pistol along with a live cartridge, another boy who disclosed his name as Chander Pal was found to be carrying a 'stick', the 3rd boy who was named as Ali was carrying an 'iron rod' and the 4th boy namely Devender (petitioner) was carrying a plastic 'torch'.

3. When the matter was taken up for arguments on 24.10.2019, learned counsel for the petitioner had raised a submission that although the FIR was lodged on 16.8.2019 at 11.15 pm wherein the names of all the accused nabbed by the police are duly mentioned, but in the arrest memo the arrest of the petitioner is shown on 17.8.2019 at 1.30 am. The State had been directed to clarify on the said aspect and accordingly status report by way of affidavit dated 2.12.2019 of Sh. Rattan Deep Bali, Assistant Commissioner of Police, was filed. Subsequently, another affidavit dated 24.2.2020 was also filed.
4. Learned State counsel has explained that although the FIR had been lodged by 10.45 pm on 16.8.2019 and the accused had also been nabbed by the police, but in fact at that point of time SI Rajinder (Investigating Officer) had not been assigned ID in the computer software and as such it is ASI Sajjan Kumar, who had been duly assigned an ID, who was shown to be an Investigating Officer as has been specifically stated so in the FIR itself. Learned State counsel has further referred to the relevant extract from affidavit dated 24.2.2020

of Rattan Deep Bali, Assistant Commissioner of Police, BPTP, Faridabad, in this regard which reads as follows:

- “1.
- Thereafter, tehrir was prepared by ASI Surender Singh on 16.8.2019 at about 10.40 P.M. and sent to police station BPTP through constable Sandeep for lodging FIR under Section 398, 401 of IPC and 25/54/59 of Arms Act upon which present FIR was registered at 11.15 P.M on the tehrir/complaint ASI Surender Singh.
2. That it is submitted that on 17.08.2019 at about 1.30 A.M. after lapse of 1 hour 15 minutes, another investigating officer namely SI Rajender Singh from Crime Branch-85, Faridabad arrived at the spot and arrested the accused. There is no discrepancy in arresting the accused in the present matter.”
5. Learned counsel for the petitioner has submitted that in the instant case all other co-accused have already been granted bail and the petitioner is on better footing inasmuch as he was not carrying any weapon and he is alleged to be carrying ‘torch’ only.
6. Opposing the petition, learned State counsel has submitted that since the petitioner is specifically named in the FIR, no case for grant of bail is made out. Learned State counsel has also informed that the petitioner happens to be involved in two other cases.
7. I have considered rival submissions addressed before this Court.
8. As far as the controversy regarding the date of lodging of FIR and the date of arrest is concerned, the said controversy can be taken care of during the course of trial when the entire evidence would be led. In any case since the only role attributed to the petitioner is that he was

carrying a 'torch' and the co-accused have already been granted regular bail, the petitioner also deserves the same concession on the grounds of parity. The petition, as such, is accepted and the petitioner is ordered to be released on bail subject to his furnishing bail bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

1.7.2021

Mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No