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

**CRM-M-1963-2022
Date of Decision: 21.02.2022**

Mahesh Bhati

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. D.S. Matya, Advocate,
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 439 of the Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.46 dated 18.03.2021 under Sections 307 & 34 of the IPC and Section 25(1)(1B) (a) of the Arms Act, 1959, registered at Police Station Sector-65, District Gurugram.

As per the allegations contained in the FIR, which was lodged on the basis of a complaint made by one Bijender Singh that when he was present at a construction site at farm in village then his younger brother, namely, Akash made a phone call to him and said that Mahesh son of Hari Chand (Petitioner) had fired firearm shot at their brother Ravi Bhati. He rushed to the spot and the gardeners of Sunar Farm, namely, Mohit Shukla and Himanshu Mishra were also shot and they were lying on the ground and when he inquired

from them, they said that Mahesh (Petitioner) accompanied by three other youths had come in white colour Swift Car and they asked them to open the gate and they fired shots at them to kill them and fled away. It is further stated by the complainant that he also saw them fleeing away and a few days ago Mahesh (Petitioner) had asked him to stop the work of the boundary wall and they did not stop, due to this grudge they had fired shots at his brother and the gardeners.

Learned counsel for the petitioner has submitted that the petitioner is in custody from 18.03.2021 and investigation of the case is complete and thereafter some of the prosecution witnesses have also been examined. He further submitted that the complainant and the other eye-witnesses have been examined and they have turned hostile and they have not identified the petitioner. He also submitted that the name of the petitioner has been stated in the FIR on the basis of some information received by the complainant from his brother and has further submitted that the petitioner is innocent and therefore, the petitioner may be considered for the grant of regular bail. He further submitted that the co-accused, namely, Dharmender alias Baba has been granted regular bail by this Court and the other co-accused, namely, Rishi and Karamveer have been granted regular bail by the trial Court and since the petitioner is also at parity with them, he may also be considered for the grant of regular bail. He also submitted that although the petitioner was earlier involved in 5 other cases but he has been acquitted in all the cases.

On the other hand, Mr. Naveen Singh Panwar, learned DAG, Haryana has vehemently opposed the grant of regular bail to the petitioner. He

has submitted that be that as it may that some of the witnesses have turned hostile, but that cannot vest a right upon the petitioner for seeking the concession of regular bail in view of the facts and circumstances of the present case. He further submitted that the weapon/revolver used for firing shots which had hit on the stomach of the injured was a licensed one belonging to the petitioner and FSL report has also been received wherein the bullets which have been found are matching with that of the weapon/revolver of the petitioner and the petitioner is the main accused in the present case and has been specifically named in the FIR along with his role. He also submitted that so far as the other three co-accused, who were granted bail are concerned, there was no specific role attributed to them, therefore, the same cannot be termed to be at parity with the present petitioner. He further submitted that once the FSL report had been received wherein the bullet and weapon had been matched, then the petitioner cannot take a plea that some of the witnesses have turned hostile and therefore, he should be granted concession of regular bail. He further submitted that even otherwise also one of the eye-witness, namely, Alok Mishra is yet to be examined and there is an apprehension to the State that in case the petitioner is released on bail then he may influence the witness and may even tamper with the evidence and even may abscond from justice. He further submitted that although the petitioner has been acquitted in 5 other cases but the petitioner certainly has criminal background and considering the aforesaid facts and circumstances of the present case, the petitioner does not deserve the concession of regular bail.

I have heard learned counsel for the parties.

One of the primary arguments raised by the learned counsel for

the petitioner was that the complainant and some of the eye-witnesses have turned hostile. However, as per the learned State counsel one of the eye-witness is yet to be examined and therefore, such a plea would not be available to the petitioner that some of the witnesses have turned hostile. Another argument raised by the learned State counsel that in view of the factual position the apprehension that the petitioner may influence the eye-witness or may abscond from justice also carries some weight. The argument raised by learned counsel for the petitioner that the petitioner is at parity with other co-accused is also unsustainable in view of the fact that petitioner is the main accused and the act of firing from the weapon has been attributed to him. Apart from the same, as per learned State counsel the weapon used in the offence was a licensed weapon belonging to the petitioner and the bullets have been matched with the weapon as per the FSL report.

Therefore, without commenting anything on the merits of the case and considering the totality of the circumstances of the present case, this Court does not deem it fit and proper to grant bail to the petitioner. Consequently, the present petition is hereby dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

21.02.2022*Bhumika***(JASGURPREET SINGH PURI)
JUDGE**

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| 1. Whether speaking/reasoned: | Yes |
| 2. Whether reportable: | Yes/No |