

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

CRM-M-3343-2022

Date of Decision:-25.04.2022

Sagar @ Kaiora.

.....**Petitioner.**

Versus

State of Haryana.

.....**Respondent.**

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Pawan Kumar Hooda, Advocate for the Petitioner.

Mr. Karan Sharma, Deputy Advocate General, Haryana.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this second petition is for the grant of regular bail under Section 439 Cr.PC in case FIR No.160 dated 10.05.2019 under Sections 307, 341, 34 IPC and Sections 25, 54 and 59 of Arms Act registered at Police Station Kundli, District Sonapat.

The brief facts of the case are that Amarjit son of Sewa Singh got registered FIR to the effect that his family had old enmity with Kuldeep @ I.G. Son of Kala. Due to this enmity on 09.05.2019 while he along with his friend Ajay son of Rajender were going towards their home on a motor cycle then in front of the house of Mahabir four boys came on the motor cycle, namely, Kuldeep @ I.G., Sandeep brother of I.G., Kuldeep @ Kalwa and Kuldeep @ Kabutar. They stopped their vehicle in front of their motor cycle and two boys namely Kuldeep @ I.G. And Kuldeep @ Kalwa fired straight upon them with their respective country made pistols. One bullet struck the elbow of his left hand whereas the second bullet hit the ribs of Ajay. He further stated that he and Ajay ran away from the spot and his mother Sunita who was passing through the street saw him and arranged a

vehicle after which he was shifted to the private hospital. During the course of investigation two persons, namely, Sandeep @Parveen and Kuldeep @ Kabutar were found innocent by the investigating agency.

Meanwhile an FIR No.112 dated 21.05.2019 under Sections 399, 402 IPC and Sections 25, 54, 59 of Arms Act was registered at Police Station IMT Rohtak and in that case six persons were arrested, namely, Kuldeep @ Kalwa, Shishant @ Shana, Kuldeep @ I.G., Kuldeep @ Kabutar and Sagar @ Koera (present petitioner). Pursuant to their disclosure statements, pistols were recovered from Kuldeep @ Kalwa, Sagar @ Koera, Shishant @ Shana and Mohit @ Doctor.

The Counsel for the petitioner firstly contends that he is not named in the FIR or in the statement under Section 161 Cr.PC recorded thereafter. He says that the petitioner is in custody since 04.06.2019 and the three main witnesses to the occurrence namely Amarjit-complainant/injured, Ajay-injured and Sunita have been examined as prosecution witnesses and have not supported the case of the prosecution and have infact turned hostile. He refers to the depositions Annexure P-2 to P-4 respectively to substantiate his claim. He further submits that as per the FIR, Amarjit-injured is stated to have received injuries at the hands of Kuldeep @ Kalwa, though the weapon purportedly used in the occurrence has been recovered from the petitioner. He further submits that Ajay the other injured is stated to have received injuries at the hands of either Kuldeep @ Kalwa or Kuldeep @ I.G. but the weapon purportedly used in the occurrence has been recovered from Shishant @ Shana. He contends that Shishant @ Shana and Kuldeep @ Kalwa have been granted the concession of regular bail vide orders dated 05.01.2022 and 24.12.2021 respectively by the Court of Additional Sessions Judge, Sonapat. He thus contends that once all the material witnesses have been examined and the co-accused have been granted the concession of regular bail, the petitioner also deserves the said concession.

The Counsel for the State has filed a status report dated 23.02.2022 . The entire sequence of investigation has been narrated in the reply. As per the reply which refers to the report of the FSL, the bullet retrieved from the body of injured Amarjit was fired from the country made pistol 315 bore got recovered by the petitioner-accused Sagar @ Kaiora in

FIR No.112 and the bullet retrieved from the body of injured Ajay was fired from the country made pistol 315 bore got recovered from the accused Shishant @ Shana in FIR No.112. He further contends that 12 out of 30 witnesses have already been examined. He, however, does not dispute the factual position that the main accused as per the FIR has been granted the concession of regular bail.

I have heard counsel for both the sides at length.

As per the FIR, Kuldeep @ I.G. And Kuldeep @ Kalwa are stated to have fired at Amarjit and Ajay. However, the bullets found from the body of Amarjit and Ajay are stated to have been fired from the weapons recovered from the present petitioner and Shishant @ Shana. Admittedly, none of the injured prosecution witnesses have supported the prosecution case. Moreover, Mohit @ Doctor, Kuldeep @ I.G. and Shishant @ Shana and Kuldeep Singh @ Kalwa have been granted the concession of regular bail either by this Court or by the court of learned Additional Sessions Judge, Sonapat. The petitioner is in custody since 04.06.2019 and only 12 out of 30 prosecution witnesses have been examined till date. The Hon'ble Supreme Court in “Dr. Gokarakonda Naga Saibaba Versus State of Maharashtra, 2016(2) RCR (Criminal) 675 and this Court in “Devender Singh @ Devender Chhabra @ Tintu Versus State of Punjab, CRM-M-27957-2015 decided on 22.08.2016 has held that grant of bail can be considered, where witnesses stand examined. As regards the report of the FSL regarding the weapons used is concerned, it would be a moot point during the trial as to whether the said FSL report alone could affix the guilt of the accused in the absence of any substantive evidence against the petitioner.

The Hon'ble Supreme Court in **Prem Singh Vs. State of (N.C.T.) Delhi 2010(1) RCR (Criminal) 608** held as under:-

“ Questioning correctness of the conviction and sentence as imposed the appellant filed an appeal. The primary stand of the appellant was that there was no evidence worth a name and even the so called injured witnesses refused to identify the assailant. The only evidence against the appellant was the alleged recovery of the pistol which was tested by the CFSL. It was found by CFSL that the bullet recovered from the body of

the injured matched those test fired through the same pistol. The caliber also was the same. The High Court held that since pistol has been recovered from the appellant, he can be convicted under Section 307 Indian Penal Code. The High Court found that the appellant who was a non-political leader belonging to a National Political Party was a man of great means and he appeared to have terrorized witnesses. The High Court held but he could not tamper with scientific evidence. The scientific evidence connects his weapon with the crime. That being so the High Court held that the conviction was in order.

In support of the appeal learned Counsel for the appellant submitted that the conclusions of the High Court had clearly unsustainable. Merely, because the appellant was the owner of the weapon that did not bring out a case under Section 307 Indian Penal Code so far as he is concerned, and in any event Section 27 has no application.

Learned Counsel for the respondent-State on the other hand supported the judgment.

We find that this is a case where even the injured did not identify the appellant to be the person who had fired the shot. Merely because he is the owner of the weapon that cannot be a ground to convict him in terms of Section 307 of Indian Penal Code. Further, no question was put to the appellant in his examination under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code') regarding his purported role. The judgment of the High Court is clearly unsustainable and is set aside. The appellant is acquitted to the charges. The bail bonds executed to give effect to the order of bail passed by this Court on 15.02.2022 shall stand discharged. The appeal is allowed. ”

A similar view has been taken in **Abdulwahab Abdulmajid Baloch Vs. State of Gujarat 2011(6) RCR (Criminal) 396** and **Sameer @ Mustakim Vs. State Criminal Appeal No.17/2018 Decided on 12.04.2018 of Delhi High Court.**

Thus, keeping in view the aforementioned facts and circumstances, period of custody already undergone by the petitioner which is almost three years and the fact that the trial is not likely to be concluded in near future, the petitioner **Sagar @ Kaiora** son of Sh. Dharambir is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing that he is not involved in any other crime other than the present case.

If the petitioner indulges in the commission of a similar offence for which he is currently charged, the State would be at liberty to move an application for cancellation of bail.

Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

April 25, 2022
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>