

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

(Through Video Conferencing)

CRM-M-10284-2021

Date of Decision:-24.02.2022

Manoj.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

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

Present:- Mr. Aditya Sanghi, Advocate for the Petitioner.

Mr. Parveen Kumar Aggarwal, Deputy Advocate General,
Haryana.

JASJIT SINGH BEDI, J.

1. The Prayer in this petition is for the grant of regular bail under Section 439 Cr.PC in case FIR No.049 dated 12.02.2021 under Sections 307, 302, 120-B, 34 IPC and 25, 27, 29 & 59 Arms Act registered with Police Station HSIICD, Barhi, District Sonipat.
2. The FIR was got registered by Parmod Kumar son of Chander Singh and the contents of the FIR are reproduced hereinbelow:-

*“ To the Station House Officer, Police Station PGIMS, Rohtak. Sir,
it is requested that I Parmod Kumar son of Chander Singh caste Jatt, am
resident of village Sargathal, Tehsil Gohana, District Sonipat, we are two
brothers. My elder brother Manoj Kumar son of Chander Singh is posted
on the post of DP in Jatt College, Rohtak. My Bhabi Sakshi Malik (wife*

of brother) wife of Majoj Kumar was posted in Railway. My brother and Bhabi along with their son Sartaj were residing in Dev Colony, Rohtak. My brother was giving training to the players of wrestling morning and evening time daily in the Akhada of Jatt College. Today also at about 6.00 PM, he was getting done practice in the Akhada of Jatt College along with his wife and child and my Bhabi was also practicing of her game and my nephew Sartaj was also with her. Sukhwinder is resident of village Baroda and Satish is resident of village Mandothi, both are the Coaches of wrestling. From some time, they were giving practice of wrestling under my brother in the Akhada of Jatt College. About 4-5 days ago, on receiving a complaint from the family of a female player, my brother has restrained Sukhwinder Coach to come into the Akhada for practice. From that day, Sukhwinder was having grudge against my brother and his family and under said grudge, today at 7.30 PM-8.00 PM, received information from my cousin brother Toni son of Sajjan Kumar resident of VPO Sargathal, Sonipat that Sukhwinder Coach along with his associates have committed the murder of my brother Manoj, his wife, child and many persons and injured them by making firing on them in the Akhada. On receiving this information, I reached at Rohtak. On inquiry, I came to know that my brother and Bhabi have died and my nephew Sartaj is injured. Apart from it, Pooja (player), Satish Coach, Pardeep alias Fauji (Player) are also died and Amarjit (Coach) is injured. Sukhwinder resident of Baroda along with his associates have committed this incident with his pre-planned Scheme. Strict legal action be taken against Sukhwinder and his associates. Sd/- Parmod Kumar. ”

3. As is apparent, one Sukhwinder who was a wrestling coach was said to be the main accused/assailant having fired at the deceased persons. As per the case of the prosecution, after registration of the FIR, the investigating agency swung into motion and Sukhwinder was arrested in

FIR No.81 dated 13.02.2021 registered at P.S. Samaypur Badli, Delhi. The

alleged weapon of offence was recovered from the petitioner at the time of his arrest. Pursuant to police remand two country made pistols were recovered from him on 18.02.2021.

4. On 13.02.2021 the first disclosure statement of Sukhwinder was recorded in which he confessed to have committed the offence and stated that he had obtained the weapons from Jammu from a person by the name of Pardeep. He stated that he could get Pardeep arrested. The petitioner was not named in the said disclosure statement as the alleged supplier of the weapons. Subsequent thereto the second disclosure statement of Sukhwinder was recorded on 15.02.2021 wherein once again the name of the petitioner did not figure and Pardeep Malik was said to be the only supplier. Subsequently, the third disclosure statement of Sukhwinder was recorded on 17.02.2021. In the said disclosure statement he stated that his earlier version of Pardeep resident of Jammu being the supplier of weapons was incorrect and the truth was that the weapons and the ammunition were supplied by the present petitioner who was a resident of U.P. The petitioner came to be arrested on 18.02.2021 and has been in custody since then.

5. The report under section 173 Cr.PC was submitted against the petitioner and charges have been framed against him on 11.11.2021 under Section 29 of the Arms Act and Section 120-B of IPC.

6. The learned Counsel for the petitioner has argued that so far as the present petitioner is concerned there is absolutely no admissible evidence whatsoever as to the petitioner being in conspiracy with the main accused Sukhwinder. He submits that the first time the name of the petitioner came to the knowledge of the investigating agency was when the

third disclosure statement was recorded. His contention is that the disclosure statement of Sukhwinder naming the petitioner is inadmissible in evidence because it has been made in police custody and, therefore, hit by Section 26 of the Evidence Act even qua Sukhwinder except to the extent of recovery. He further argues that a perusal of the three disclosure statements of Sukhwinder coach as also that of Manoj-petitioner would show that there is absolutely no reference to the petitioners having conspired with Sukhwinder coach. The contention is that though these disclosure statements are inadmissible, however, even if they were taken to be true there was no reference to the petitioner knowing that he was supplying the weapons to Sukhwinder for the purpose for which they were ultimately used. Thus, even the disclosure statements taken to be gospel truth do not inculcate the petitioner and, therefore, he be granted the concession of regular bail. Counsel for the petitioner has further argued that 66 witnesses have been cited in the report under Section 173 Cr.PC and none of those witnesses are witnesses to the alleged conspiracy between the petitioner and Sukhwinder coach and thus the possibility of the conviction by the petitioner is highly unlikely and thus he ought to be granted the concession of regular bail.

7. Per contra, the learned State Counsel has argued that it is a case of multiple deaths. A conspiracy is always hatched in secrecy and therefore, it would be a matter of trial as to whether the petitioner has conspired with Sukhwinder or not. He also stated that Darshan, the co-accused of the petitioner who is said to have supplied the weapons to the petitioner for onward supply to Sukhwinder has not been arrested till date and, therefore, the petitioner ought not to be granted the concession of regular bail.

However, on a query as to whether there was any admissible evidence against the petitioner other than the disclosure statement suffered by Sukhwinder and the petitioner in custody, the learned State Counsel fairly conceded that out of 66 cited witnesses none were cited to prove the alleged conspiracy between the petitioner and Manoj. He also admitted that other than the disclosure statements suffered in police custody there was no admissible evidence available with the prosecution so as to connect the petitioner with Sukhwinder. He however stated that the petitioner's brother's son used to go the *Akhara* where Sukhwinder used to train wrestlers and, therefore, Manoj-petitioner knew Sukhwinder, main accused.

8. I have heard learned Counsel for both the parties at a considerable length and have gone through the entire record including the report under Section 173 Cr.PC.

9. Admittedly, the occurrence in question was given effect to by Sukhwinder who has committed the murder of as many as six persons on account of enmity with Manoj deceased who was also a wrestling coach regarding the working of *Akhara*. The question would be as to what evidence is available on record to show the conspiracy between the petitioner and Sukhwinder coach.

10. As the facts enumerated hereinabove would show the main accused Sukhwinder has named the petitioner as the alleged supplier of weapons only in the third disclosure statement. In the first two statements one Pardeep Malik is said to be the supplier. Even otherwise, these statements made to the investigating agency are only admissible to the extent of recovery alone. The purported disclosure statement of the petitioner also has no evidentiary value, more so when it lead to no

recovery.

11. Undoubtedly, evidence of conspiracy is very rarely available because conspiracy is hatched in secrecy. However, in the present case, what stands out is that even the disclosure/confessional statements do not refer to a conspiracy between Majoj-petitioner and Sukhwinder, main accused for having conspired to commit the murders in question. The disclosure statements only state the role of Sukhwinder and that the petitioner supplied the weapons. The learned State Counsel has also very fairly stated that there was absolutely no incriminating evidence whatsoever against the petitioner as no prosecution witness cited was a witness of a conspiracy between the petitioner and Sukhwinder.

12. The report under Section 173 Cr.PC has been filed and as many as 66 witnesses have been cited and as per the counsel for the petitioner only two have been examined. Thus the trial of the present case is not likely to be concluded in the near future. Even otherwise the petitioner is in custody since 18.02.2021. The question of tampering with any evidence or threatening Pws appears to be remote. Further, the chance of the petitioner absconding is unlikely. Even the learned State Counsel has not raised any serious concern that the petitioner would abscond or tamper with the evidence if he is granted the concession of regular bail.

13. In the light of the above discussion, this petition is allowed and the petitioner **Manoj** son of Sh. Jai Parkash is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, Rohtak. He shall surrender his passport, if any, and shall mark his presence before the concerned police station on the first Monday of every month till the conclusion of the trial.

It is further made clear that if petitioner indulges in similar offence for which he is currently charged, the State would be at liberty to move an application for cancellation of bail.

14. Nothing observed herein shall be taken as an expression of opinion on the merits of the case and the observations made above are only for the purposes of deciding this bail application. The trial Court shall deal with the case on the basis of evidence lead before it, uninfluenced by any observation made in this order.

(JASJIT SINGH BEDI)
JUDGE

February 24, 2022
Vinay

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