

**(225) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-12577-2022

Date of Decision:15.11.2022

Nitin Kumar @ Chuch

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present : Mr. Salil Dev Bali, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, Sr. D.A.G. Punjab.

VIKAS BAHL, J. (Oral)

This is the first petition under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in FIR No.277 dated 23.10.2020 registered under Sections 307, 323, 148, 149 IPC, 25 & 27 of Arms Act, 1959 (sections under Section 148, 149 IPC and Section 25 of Arms Act have been deleted vide GD No.037) at Police Station City Ferozepur, District Ferozepur.

Learned counsel for the petitioner has submitted that in the present case the occurrence had taken place just opposite a shop where a high definition (HD) CCTV camera had been installed and the entire occurrence was recorded by the same. On seeing this CCTV footage, it has surfaced that from 8.34 PM onwards, the petitioner was seen to be alone, when the complainant party encircled him. The complainant party wanted to snatch the licensed weapon from the petitioner and in the process, the weapon went off and the gun shot hit the complainant and the said fact is apparent from the fact that Sections 148, 149 IPC and Section 25 of Arms Act have been deleted subsequently. It is submitted that even as per the case

of the prosecution, the complainant had suffered one injury and the complainant is now keeping good health. It is further stated that the petitioner is in custody since 06.10.2021 and the investigation in the case is complete and challan has been presented and there are 21 prosecution witnesses, out of whom, none have been examined, thus, the conclusion of the trial is likely to take time.

On the other hand, learned State counsel has opposed the regular bail and has submitted that the injury attributed to the present petitioner attracts the offence under Section 307 IPC. It is further submitted that the petitioner is a habitual offender and he is involved in other cases also and thus, does not deserve the concession of regular bail.

Learned counsel for the petitioner, in rebuttal to the said argument, has relied upon the judgment of Hon'ble Supreme Court in **Maulana Mohd. Amir Rashadi v. State of U.P. and another**; reported as 2012 (2) SCC 382 to contend that the facts and circumstances of the present case are to be seen and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

This Court has heard the learned counsel for the parties and has perused the paper book.

In the present case, the petitioner is in custody since 06.10.2021

and the investigation in the case is complete and challan has been presented and there are 21 prosecution witnesses, out of whom, none have been examined and, thus, the conclusion of the trial is likely to take time. Even as per the prosecution case, complainant has suffered only one injury, although, the said injury attracts the offence under Section 307 IPC. The defence raised by the petitioner as detailed in paragraph-4 of the petition is reproduced hereinbelow:-

*“4. That it is further submitted that the spot where the occurrence had taken place was just opposite to a shop where high definition (HD) CCTV camera was installed and the entire occurrence was captured. For the kind perusal of this Hon'ble court the said footage is attached in a pendrive as Annexure P-2 along with the present petition. From the perusal of this CCTV footage it can be seen that from time 8.34 PM onwards it is clear that the Applicant who was alone was encircled by Complainant Sajan @ Malli and his companions and thereafter the complainant and others attached the Petitioner and wanted to snatch the licensed weapon of the petitioner and during this grappling the weapon went off and the shot hit the complainant who was attacking the petitioner in an aggressive manner. This contention of the petitioner becomes clear from the perusal of GD No.037 dated 30.12.2021 incorporated by the police whereby sections under Section 148, 149 IPC and Section 25 of Arms Act had been deleted and it had been categorically been found that the allegations regarding 4-5 unidentified persons present on the spot along with the Petitioner have been found to be not true and further the pistol involved in the occurrence was a licensed pistol of the Petitioner. Copy of GD No.037 dated 30.12.2021 is annexed herewith as **Annexure P-3.**”*

The above said aspect would be finally adjudicated during the course of trial.

Keeping in view the abovesaid facts and circumstances as well as law laid in *Maulana Mohd. Amir Rashadi's* case (supra), the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to him not being required in any other case.

However, it is made clear that in case, any act is done by the petitioner to threaten the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

(VIKAS BAHL)
JUDGE

15.11.2022

rajeev

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No