

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-17075-2022

Date of decision : 02.05.2022

Sunil Kumar alias Shila

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Harender Singh, Advocate
for the petitioner.

Mr.Sukhbeer Singh, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 439 Cr.P.C. for granting regular bail to the petitioner in FIR no.36 dated 07.06.2018 registered under Sections 302, 379-B, 148, 149 IPC and Section 25 of the Arms Act, 1959 at Police Station Naya Gaon, District SAS Nagar, Mohali.

Learned counsel for the petitioner has submitted that in the present case, the FIR was registered on the complaint of Pritam with respect to the death of his brother Saurav @ Mandy and as per the FIR, there were five persons named but the petitioner was not named in the FIR. It is further submitted that it is co-accused Aakash who had fired at the brother of the complainant and had caused the fire arm injuries. It is also submitted that there were some unknown persons also mentioned in the FIR and no specific injury was attributed against said unknown persons. It is further submitted that the complainant Pritam had stated that he would be able to identify the said unknown persons in case they come before him. Reference has been made to

he can recognize accused Rishab @ Uddu, Arun @ Noni and Aakash present in the Court but is unable to identify the other accused including accused Gagandeep and Sunil @ Sheela. It is thus, submitted that it is not even remotely shown that Pritam was present at the time of occurrence. It is stated that the disclosure statement of co-accused Gagandeep involving the present petitioner would also lose significance inasmuch as PW-1 Pritam has not recognized Gagandeep as one of the persons who was present at the spot. It is submitted that the petitioner has been in custody since 27.09.2018 and there are 20 prosecution witnesses out of which, only one witness has been examined and the prosecution has moved an application under Section 319 Cr.P.C. and thus, the trial is not likely to be concluded in near future.

Learned State counsel, on the other hand, has opposed the present petition and has submitted that the pistol, which was used in the present case, has been recovered from the present petitioner.

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

A perusal of the FIR would show that five persons have been specifically named in the present case but the petitioner has not been named and the injury with gun shot has been attributed to Aakash. Although it has been stated that there was some unknown persons but no specific injury has been attributed to any of the unknown persons. It has been stated in the FIR by the complainant that he can recognize the unknown persons when they come before him. A perusal of the evidence PW-1 Pritam (page 27 of the paper book) would show that he has identified the accused namely Rishab @ Uddu, Arun @ Noni and Aakash present in the Court but is unable to recognize other accused including the present petitioner and Gagandeep. Even the alleged

to be considered in context of PW-1 Pritam failing to recognize said Gagandeep. The said issue would be considered finally during the course of trial. No injury has been attributed to the present petitioner nor any overt act has been attributed and although the recovery of pistol has been effected from the petitioner but keeping in view the fact that the petitioner has been in custody since 27.09.2018 and there are 20 prosecution witnesses and out of which one witness has been examined and the prosecution has moved an application under Section 319 Cr.P.C. and thus, the trial is likely to take time, the petitioner deserves the concession of regular bail.

Keeping in view the above said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and 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 or influence 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 a final 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 petition.

(VIKAS BAHL)
JUDGE

May 02, 2022
Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No