

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

CRM-M-17401-2022 (O&M)
Date of Decision:- **22.12.2022**

SUNIL ALIAS POLI

... Petitioner

Versus

STATE OF HARYANA

... Respondent

-.-

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

-.-

Present:- Mr. Bipan Ghai, Senior Advocate with
Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

Ms. Suman Sagar, Advocate
for the complainant.

-.-

KARAMJIT SINGH, J. (Oral)

The petitioner has approached this Court seeking grant of regular bail in a case having FIR 537 dated 20.07.2020 registered under Sections 148, 149, 341, 302, 120-B IPC and Section 25 of Arms Act at Police Station HTM District Hisar.

The counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case at the instance of

complainant-Om Parkash. The counsel for the petitioner further submits that detailed reply was filed by the State counsel dated 7.7.2022 by way of affidavit of Mr. Priyanshu Dewan, Deputy Superintendent of Police, Hisar-I. That in the said reply it has been allegedly mentioned that the petitioner conspired with other accused persons and also supplied arms and ammunition to them to commit murder of Mukesh son of complainant and thereafter on 20.7.2020 Suraj @ Bachi and other co-accused committed the murder and then informed the petitioner on WhatsApp. The counsel for the petitioner further submits that the petitioner was arrested in this case on 22.7.2022 and since then, he is in custody. That during the investigation of the case, no fire arm was recovered from the possession of the petitioner and as per the aforesaid reply filed by the State only one car and two mobile phones were recovered from the possession of the petitioner. The counsel for the petitioner further submits that co-accused Suraj @ Bachi was also arrested and from him .32 bore pistol and 11 live cartridges were recovered and as per report of FSL the said pistol recovered from Suraj @ Bachi matched with the concerned fired cartridge cases. The counsel for the petitioner further submits that during the trial, both the eye-witnesses namely complainant-Om Parkash and Abhishek are examined and Abhishek failed to identify the alleged assailants. The counsel for the petitioner further submits that in the light of the fact that after investigation, the police came to conclusion that the petitioner was not present at the spot of occurrence at the relevant time, the testimony of complainant to the effect that the present petitioner fired fatal shots at the time of occurrence stands belied and further is not corroborated by the report of FSL. The counsel for the petitioner

further submits that in view of the above and the fact that the petitioner is incarcerated for the last 2 years and 4 months, the petitioner is entitled to get concession of regular bail.

The instant petition is resisted by the State counsel as well as the counsel for the complainant. The counsel for the complainant submits that the petitioner was named in the FIR to be the main person, who caused murder of Mukesh son of the complainant. It is further contended that the complainant even while appearing in the witness-box has also stated so.

The State counsel has not disputed the contents of the reply dated 7.6.2022 filed on behalf of the State and he on instructions from ASI Sandeep submits that during the investigation of the case, it was found that the present petitioner conspired with the other accused persons and provided them fire arms and ammunition to commit murder of Mukesh and then his co-accused executed the plan and committed murder of Mukesh and thereafter informed the petitioner who was later on arrested and got recovered one car and two mobile phones and police recovered fire arm and cartridges from co-accused Suraj @ Bachi, who actually committed the said murder assisted by some other persons. The State counsel has not disputed the fact that the petitioner is incarcerated for 2 years and 4 months and that both the material witnesses namely complainant-Om Parkash and Abhishek stand examined.

I have considered the submissions made by counsel for the parties.

In the FIR the petitioner was named as the main assailant, who fired fatal shots at deceased Mukesh. Even while appearing in the witness-box complainant-Om Parkash father of the deceased stated so. However another eye-witness Abhishek failed to identify the assailants while appearing in the witness box. As per the reply of the State dated 7.6.2022, the petitioner hatched conspiracy with other accused persons to kill Mukesh and he provided fire arms and ammunition to them and then co-accused Suraj @ Bachi and some other co-accused committed Murder of Mukesh on 20.7.2020 and thereafter they informed about the same to the petitioner. The petitioner was arrested on 22.7.2020 and as per the custody certificate furnished by the State counsel, the petitioner is in custody for the last 2 years and 4 months. As per the aforesaid reply filed by the State, during investigation, police recovered one car and two mobile phones from the possession of the petitioner meaning thereby that no fire arm was recovered from his possession by the police. Co-accused Suraj @ Bachi was also arrested and from him the police recovered one pistol and cartridges and as per the counsel for the petitioner, the said pistol matched with the concerned fired cartridge cases.

In view of the fact that the complainant has since beginning asserted that the petitioner actually participated in the murder of Mukesh but as per investigating agency, he conspired and provided fire arms to the assailants who actually committed murder of Mukesh, the exact complicity of the petitioner would be ascertained at the time of final disposal of the trial.

Further both the main witnesses namely Om Parkash and Abhishek who witnessed the occurrence, have been examined during the trial and as such there is no apprehension if released on bail the petitioner is going to influence them. However, it will take time for the trial to conclude, so no purpose is going to be served by prolonging the judicial custody of the petitioner, who is already behind the bars for the last more than 2 years and 4 months.

For the forgoing reasons, present petition is allowed without commenting on the merits of the case and the petitioner is ordered to be released on bail subject to his furnishing bail and surety bonds to the satisfaction of the trial Court/CJM/Duty Magistrate concerned.

However any observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

(KARAMJIT SINGH)
JUDGE

22.12.2022
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No