

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

218

CRM-M-23840-2022
Date of decision: 01.06.2022

YOGESH @ MONU

... Petitioner

Versus

STATE OF HARYANA

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Rakesh Nehra, Sr. Advocate with
Mr. Bindu Tanwar, Advocate
for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana.

VINOD S. BHARDWAJ. J. (ORAL)

Instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case bearing FIR No.79, dated 19.03.2021 under Sections 148, 149, 302, 201, 114 and 120-B of the Indian Penal Code, 1860 and Sections 25/27 of the Arms Act, 1959 registered at Police Station Salhawas, District Jhajjar, Haryana.

Learned counsel appearing on behalf of the petitioner *inter alia* contends that the FIR in the present case has been registered at the instance of Ravinder Singh @ Padam, who had stated to the effect that on the date of incident at around 4.30/5.00 p.m. his nephew Vikram (since deceased) gave a call to him asking him to reach the Akhara of his brother Rameshwar (Muddhu Ka Akhara) near Khorda Mor where Vikram was present. Ravinder-complainant (uncle of the deceased) was informed by Vikram that Sumit @ Tatla had called him to a party at Punga Akhara for celebrating birthday of his nephew where Sandeep @ Punga and Kalia son of Ram Singh were present alongwith 2-3 other boys and drinking beer and liquor. Vikram also informed

that the said boys also made him drink beer. Thereafter, Sumit @ Tatla and Kalia abused and insulted him. Vikram, thereafter, left the Punga Akhara. Ravinder and Vikram thus left for Punga Akhara to sort out the issue and to resolve the said dispute. When Ravinder and Vikram reached the Punga Akhara, they saw Sumit @ Tatla @ Bhole standing inside the Akhara and holding a pistol in his hand. Vikram and Sumit again entered into a verbal dispute and when Ravinder tried to rescue Vikram and resolve the same, he heard the sound of firing of a bullet. On turning back, he saw that Sumit @ Tatla was holding a gun in his hand and was running towards the Akhara.

Learned counsel appearing on behalf of the petitioner *inter alia* contends that the petitioner has been nominated as an accused with the aid of Section 120-B of the IPC, whereas he is not involved in the commission of the offence. He said that there are two incidents that had taken place on the same day. The first incident related to the verbal altercation that took place between the deceased Vikram and Sumit @ Tatla, the main case at the time of birthday celebration of nephew of the complainant. Thereafter, the parties had departed and when Ravinder and Vikram came back to the Akhara to resolve the issue, the petitioner and other are not stated to be present there and that only Sumit @ Tatla was present at the scene alongwith the weapon in his hand. The shot in question was fired by Sumit @ Tatla. He contends that there is no conspiracy or common motive shared by the petitioner who is purportedly part of 2-3 unknown boys, who were drinking beer at the time when Vikram reach Punga Akhara to be a part of the celebration. He further submits that the eye witness-complainant Ravinder (uncle of deceased) appeared as prosecution witness before the trial Court and that while substantiating the case of the prosecution he has specifically identified the three named assailants, however, when the identification of the petitioner was to

be done, he has specifically denied the petitioner to be amongst the persons who were present in the Punga Akhara at the time of celebrations being held therein. It is thus contended that there was no occasion for the petitioner to be present or to have been involved in the present case and that he has already undergone an actual custody of more than one year.

Per contra, learned State Counsel points that the petitioner has been nominated as an accused on the basis of a disclosure of a co-accused Mandeep who has specifically stated that the petitioner alongwith Devender @ Kala had called Sumit @ Tatla and conspired to eliminate Vikram. He thus says that the petitioner being a part of the conspiracy has rightly been apprehended by the prosecution. He submits that recovery of the Scooty has been effected from the petitioner and that the co-accused Mandeep had fled away on the Aactiva (Scooty) with the petitioner and that the same was recovered at the disclosure statement of the petitioner.

The aforesaid submission of the learned State Counsel is controverted by learned counsel for the petitioner by submitting that as per the allegations as set out in the FIR, the co-accused Mandeep was not present at the time of second incident when the gun shot was fired by Sumit @ Tatla. There was thus no occasion for the said co-accused to have fled away with the petitioner. In any case, the said vehicle has not been used in commission of the offence or to facilitate the commission of the offence. The recovery of the same does not link the petitioner or his involvement in the said offence. It is further submitted that out of 30 cited witnesses only the examination-in-chief of one witness has been recorded so far and that the conclusion of the trial shall take substantial time.

I have heard the learned counsel for the respective parties and have gone through the material available on record with their able assistance.

Considering the role attributed to the petitioner, the period of custody, the alleged recovery effected as well as the stage of trial, I deem it appropriate to allow the instant petition.

Accordingly, the present petition is allowed and the petitioner is admitted to regular bail subject to his furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate, concerned.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of available material.

Petition stands allowed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

June 01, 2022
rajender

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No