

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-28729-2022

Date of decision : 27.10.2022

Kuldeep

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Ms.Aashna Gill, Advocate
for the petitioner.

Mr.Praveen Bhadu, AAG, Haryana.

Mr.Baljeet Beniwal, Advocate and
Mr.Kamal Rathi, Advocate
for the complainant.

VIKAS BAHL, J.(ORAL)

This is a first application under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.9 dated 09.01.2022, registered under Sections 148, 149, 323, 307, 506 IPC and Sections 25 and 27 of the Arms Act, 1959 (Sections 120-B and 212 IPC added later on) at Police Station Titram, District Kaithal.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 09.01.2022 and the investigation is complete and the challan has been presented and there are 31 prosecution witnesses, out of which, none have been examined and thus, the conclusion of the trial is likely to take time. It is submitted that the present case is a case of version and cross version and FIR no.10 dated 09.01.2022 was

party of the petitioner, against 14 accused persons on the allegation that on 08.01.2022 when, in order to resolve the dispute between Kuldeep Ballu (petitioner) and Dixit, their respective supporters had gone to the police station and thereafter, a dispute had arisen and in the said dispute Pardeep Garhi had fired at Parveen @ Beenu which had hit on the elbow of his right hand and then Kala Khurana had also fired at Parveen @ Beenu and Gurmeet @ Meeta (complainant in FIR no.9) had given two blows with a *gandasi* on the head of Parveen @ Beenu and the other persons had also caused injuries to Parveen @ Beenu. In the said FIR, it was stated by Parveen @ Beenu that in his self defence, he had also fired from his pistol and he was not aware whether the same had hit any person or not. Learned counsel for the petitioner has further referred to the MLR dated 08.01.2022 as per which there were 4 injuries suffered by Parveen @ Beenu including injury on the scalp, right shoulder and right elbow. It has been stated that Parveen @ Beenu was admitted in Pt.B.D.Sharma, Post Graduate Institute of Medical Sciences, Rohtak and as per the notes prepared by the doctor it was found that a metallic foreign body was lodged near the right scapula. It is submitted that in spite of the same, the police had deleted Section 307 IPC from FIR no.10 and had added Section 326 IPC. It is further submitted that as per the allegations levelled in the FIR, it has been stated that Kuldeep (petitioner) and Pradeep had also fired at Pradeep, resident of Garhi, with their pistols with the intention to kill which hit on the hand and stomach of said Pradeep. It is stated that it has not been specifically alleged as to which injury has been attributed to the present petitioner and one Parveen @ Beenu has also been attributed an injury with the pistol on the stomach of Pradeep resident of Garhi and said Parveen @ Beenu has been

granted regular bail by this Court vide order dated 21.09.2022 passed in CRM-M-42613-2022. It is further submitted that the recovery from the present petitioner is of .315 bore rifle which as per the report under Section 173 Cr.P.C. has not been used in the occurrence and has not even been sent for FSL examination. It is further stated that Pradeep resident of Garhi is in a fit condition. It is argued that in FIR no.9, it has not been mentioned that the injuries were also caused to Parveen @ Beenu belonging to the petitioner's party, in fact it is accused persons in FIR no.10 who were the aggressors and reference has been made to the photographs of the car of Parveen @ Beenu, belonging to the party of the petitioner, to show that there were gun shot marks on the windscreen of the said car.

Learned State counsel and learned counsel for the complainant have opposed the present petition and have submitted that as far the present petitioner is concerned, it has been specifically alleged in the FIR that the present petitioner and Pradeep had fired at Pradeep resident of Garhi with their pistols with the intention to kill which had hit on the hand and stomach of Pradeep. It is further submitted that even Pradeep resident of Balu and Praveen @ Beenu resident of Khurana had fired at the complainant with an intention to kill him. It is stated the present petitioner has been involved in four other cases out of which in three cases, the petitioner has been acquitted but one case is pending against the present petitioner.

Learned counsel for the petitioner, in rebuttal, has submitted that the case which is pending against the petitioner is FIR no.8 which is also between the same parties and the petitioner is on bail in the said case and has relied upon the judgment of Hon'ble Supreme Court in “*Maulana Mohd. Amir Rashadi vs. 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 while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. 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 learned counsel for the parties and has perused the paper book.

The present case is a case of version and cross version. FIR no.10 had been recorded on the statement of Parveen @ Beenu and as per the said FIR, injuries, including fire arm injuries, were inflicted upon Parveen @ Beenu by the accused persons in FIR no. 10 and as per the MLR, 4 injuries, including injuries on the scalp, shoulder and elbow, had been suffered by the petitioner Parveen @ Beenu. The said Parveen @ Beenu belongs to the party of the present petitioner, was stated to be admitted in Pt.B.D. Sharma, Post Graduate Institute of Medical Sciences, Rohtak and perusal of notes of the concerned doctor would show that a metallic foreign body was lodged in the right scapula of Parveen @ Beenu. As per the FIR no.9, petitioner Kuldeep along with one Pradeep has been attributed injuries with the pistol on the hands and stomach of Pradeep. It has not been specifically stated in the FIR as to which injury has been attributed to the present petitioner. It is the case of the petitioner that recovery of .315 bore rifle has been effected from the present petitioner but as per report under

Section 173 Cr.P.C. the said rifle had not been used in the alleged occurrence and has not been sent for FSL examination. The said fact has not been rebutted by learned State counsel and learned counsel for the complainant. The question as to which party was the aggressor would be finally adjudicated during the course of trial. Parveen @ Beenu has been granted regular bail by this Court vide order dated 21.09.2022 passed in CRM-M-42613-2022. The petitioner has been in custody since 09.01.2022 and the investigation is complete and the challan has been presented and out of 31 prosecution witnesses, none have been examined and thus, the conclusion of the trial will take time.

Keeping in view the above said facts and circumstances, the 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.

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.

However, 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

October 27, 2022

Davinder Kumar