

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****SR. No.207****CRM-M-35552-2022 (O&M)
Date of Decision:18.08.2022****Sagar****...Petitioner****Versus****State of Haryana****...Respondents****CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT****Present: Mr. Aditya Sanghi, Advocate,
for the petitioner.****Mr. Amrik Narwal, DAG, Haryana.****N.S. SHEKHAWAT, J. (Oral)****CRM-28837-2022**

For the reasons mentioned in the application, the same is allowed, as prayed for. Exemption sought is granted.

Main case

The petitioner has filed the instant petition before this Court with a prayer to grant bail pending trial to him in case FIR No.679 dated 10.10.2021 registered under Sections 148/149/302/452/449/506/450 IPC and Sections 25/27 of the Arms Act at Police Station, Kharkhoda, District Sonapat.

Brief facts of the case are that the FIR in the instant case was got registered by Harsh @ Mintu son of Ramesh Kumar, since deceased. The complainant alleged that his sister Seema was married to Sanjeev, main accused, about 07 years ago. After marriage, Sanjeev and his family members had been harassing them illegally on one pretext or the other. A

few days prior to the occurrence, Sanjeev had exchange hot words with Ramesh Kumar (since deceased). A day prior to the incident, i.e. on 09.10.2021, Sanjeev came to the house of the complainant and demanded money from the Ramesh Kumar (since deceased), who refused to give money and again there was heated exchange of words between them. It has further been alleged that on the intervening night of 9th and 10th October, 2021, Sanjeev, his three nephews, namely, Sagar (petitioner), Chintu and Lavjeet as well as sisters of Sanjeev, namely Geeta and Kavita, besides, mother Beero and friends of Sanjeev came to the house of Ramesh Kumar (since deceased). They exhorted that Ramesh Kumar should be taught a lesson and on their saying so, Sanjeev fired at the temple/head of Ramesh Kumar. Even petitioner-Sagar, Chintu and Lavjeet were also allegedly armed with weapons. With these broad averments, the above-said FIR was got registered by the complainant on 10.10.2021.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the instant case as he is a close relative of Sanjeev, main accused, who was having dispute with the family members of his wife. Even in the FIR (P-2), the main allegations were only targeted against Sanjeev and no overt act has been attributed to the present petitioner. Even from a perusal of the FIR, it is evident that the close relatives/family members of Sanjeev have been falsely implicated. Still further, it has been argued that no recovery has been effected from the petitioner. During the course of investigation the petitioner is only shown to have been armed with weapons. Apart from that, it has further been submitted that no other weapon of offence was used in the commission of crime. Learned counsel further submits that Lavjeet, Kavita and Beero have

been found innocent, which falsifies the case of prosecution and only Geeta, Sanjeev @ Sonu and Sagar (petitioner) have been arrested.

Learned counsel for the petitioner has further submitted that Sumit Dahiya @ Chintu has been granted the concession of pre-arrest bail by this Court on 20.04.2022 and he relies upon the order (P-9) in support of his contention. He further submits that the petitioner was not even present at the spot and has been falsely arrayed as an accused in the case. He further submits that even as per the case of the prosecution, the petitioner has been simply shown to be present at the place of occurrence. Still further, learned counsel has submitted that during the course of investigation it has been falsely alleged that the petitioner identified the place of occurrence, whereas the place of occurrence was already known to the police. Consequently, there is no incriminating evidence placed on record to show the complicity of the present petitioner in the case in hand.

Learned counsel for the State has vehemently opposed the grant of concession of bail pending bail and submitted that the petitioner has been actively participated in the crime. He has further submitted that the petitioner had hatched a criminal conspiracy with his close relatives and he was one of the main accused in the instant case, who had supplied weapon to the main accused. He further submitted that the petitioner may temper with the evidence and therefore, his bail petition may be dismissed.

I have heard the learned counsel for the parties and perused the case file minutely.

In the present case, the investigation of the case has been completed and the petitioner has placed on record the copy of final report of investigation under Section 173 Cr.P.C. as Annexure P-3. The petitioner

has also placed on record the various disclosure statements made during the courser of investigation.

The Courts, while granting bail, should exercise its discretion in a judicial manner or not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. The court, granting bail, has to consider, among other attending circumstances, the factors such as (a) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (b) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant/witnesses of the case and (c) prima facie satisfaction of the court in support of the charge. Apart from that, the Court while considering a petition for grant of bail in a non-bailable offence apart from the seriousness of the offence, the likelihood of the accused fleeing from the process of law and tempering with the prosecution witnesses have to be noted.

Considering the above scenario, it is observed that in the instant case, investigation is complete and the petitioner is in custody. Even though, the trial may have commenced, yet there is no possibility of conclusion of trial in the near future. This Court has repeatedly held that when the under trial prisoners are detained in the jail custody to an indefinite period, Article 21 of the Constitution is violated. The said view has been upheld by Hon'ble the Supreme Court in in **Sanjay Chandra Vs. CBI, 2011(4) RCR (CrI) 898** .

I am conscious of the fact that even though the present petitioner is charged with a serious offence, but at the same time, I cannot lose sight of the fact that the investigation has been completed and charge-sheet has been submitted. Consequently, the presence of the petitioner in custody may not be necessary for the purpose of further investigation. Moreover, the petitioner is in custody since 19.10.2021. Even no overt act has been attributed to him and no recovery has been effected from him and even he has been simply shown to be present at the place of occurrence.

Taking into consideration the totality of the facts and circumstances and without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail pending trial on his furnishing bail bonds and surety to the satisfaction of the concerned trial court/Duty Magistrate/Chief Judicial Magistrate with following conditions:-

- (i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the trial Court or any other authority.
- (ii). He shall remain present before the trial Court on all the dates fixed for hearing of the trial. In case he has any reason for remaining absent due to unavoidable circumstances, he shall make an appropriate application before the trial Court with proper documents in support of the same.
- (iii) He shall surrender his passport, if any (if not already surrendered), and in case, he is not a holder of the same, he shall file an affidavit to that effect.

(iv) In case the petitioner tries to influence the witnesses or tempers with the prosecution evidence in any manner, liberty is granted to the prosecution to move an appropriate application in this regard and such an attempt shall be viewed seriously.

18.08.2022
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO