

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

Reserved on 14.03.2023

Pronounced on 20.03.2023

CRM-M-2038-2023

Javed @ Jabid

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Ram Singh Chaudhary, Advocate for the petitioner.

Mr. Gaurav Bansal, Assistant Advocate General, Haryana.

ASHOK KUMAR VERMA, J.

1. The petitioner has filed the present petition under Section 439 Cr.P.C. for grant of regular bail in case FIR No. 102 dated 15.04.2021 registered under Sections 332, 353, 307 read with Section 34 IPC and Section 25 of the Arms Act at Police Station Sadar Tauru, District Nuh (Mewat).

2. Brief facts of the case are that on 15.04.2021, complainant-SI Satya Prakash along with other police officials was present near Dhidara By Pass, Tauru. He received a secret information that a person named Javed @ Jabid (petitioner herein) along with his associates, namely, Mohan, Gajender @ Gajju and Ashok, who were wanted criminals were sitting in an old dilapidated room opposite Khushal Krishi Farm, main road Tauru, Khoru Kalan and if, a raid was conducted,

they could be apprehended. Accordingly, a raiding party was constituted and the place where the aforesaid accused were sitting was raided. On seeing the police party, a tall boy came out of the room while flashing his country made pistol and fired upon the police party but all the police officials escaped unhurt. In retaliation, the complainant also fired a shot in the air. The said boy after throwing his country made pistol, jumped over the boundary wall but was apprehended by the police, who disclosed his name as Javed @ Jabid. Thereafter, another boy came out of the room and fired a gunshot upon the police party but the bullet passed just near to the ear of ASI Isrile, who also fired a gunshot in the air. The said accused threw his pistol inside the room and thereafter, was arrested, who disclosed his name as Gajender@ Gajju. The remaining two boys were also arrested by the police, who disclosed their names as Mohan and Ashok. As Javed @ Jabid, had jumped over the wall and fell into a deep pit, he suffered injuries on his left foot. He was taken to the hospital for treatment. Formal FIR under Sections 332, 353, 307 read with Section 34 IPC and Section 25 of the Arms Act was registered. Disclosure statements of all the four accused were also record. Three more live cartridges were got recovered pursuant to the disclosure statement suffered by petitioner-Javed @ Jabid, from a room adjoining the service station of his uncle Fakruddin in village Khor.

3. Learned counsel for the petitioner, *inter alia*, contends that petitioner has falsely been implicated in the instant case. The petitioner has no connection with the alleged offences. As per prosecution story, the petitioner had also suffered injury while he tried to run away from the

place of occurrence, while scaling the boundary wall. However, the said boundary wall is about 2 feet and no injury can be suffered to anybody while scaling such a small wall, rather the police officials gave third degree torture to the petitioner and broken his leg. Learned counsel further contends that this a no injury case as none of the police officials received any injury, therefore, it is an debatable issue as to whether offence under Section 307 IPC is made out or not. As far as recovery of three more live cartridges is concerned, the same were recovered from a room adjoining the service station of his uncle Fakruddin in village Khori. It is not possible for the petitioner to keep three live cartridges at a distant place from the place of occurrence. The said recovery of cartridges is doubtful as no independent witness was joined by the police. The petitioner is in custody since 15.04.2021. Challan has already been presented and charges were framed by the trial Court vide charge-sheet dated 13.12.2021 (Annexure P-7). Out of total 22 police officials, only three witness have been examined, so far. The trial is likely to take long time. No useful purpose will be served by further detention of the petitioner in custody. Thus, it is prayed that the petitioner may be released on regular bail. In support of his contentions, learned counsel for the petitioner has placed reliance upon judgments in ***(i) Dataram Singh vs. State of Uttar Pradesh and another, 2018(3) SCC 22; (ii) Sumit Mehta vs. State of N.C.T. of Delhi, 2013(15) SCC 570; (iii) Prahalad Singh Bhati vs. N.C.T., Delhi; 2001(4) SCC 280; (iv) The State of Rajasthan, Jaipur vs. Balchand; 1977(4) SCC 308 and (v) Gurbaksh Singh Sibbia etc. vs. The State of Punjab, 1980(2)***

SCC 565.

4. On the other hand, learned State counsel has vehemently opposed the present petition in terms of reply dated 18.02.2023 filed by way of affidavit of Sh. Ashok Kumar, Deputy Superintendent of Police, Headquarter Nuh, District Nuh and submits that there are specific allegations against the petitioner that he along with his associates had fired gunshots upon the police party when a raid was conducted to nab them. He further submits that petitioner is a habitual offender as he is involved in 39 more cases of similar nature as per report (Annexure R-1). As such, learned counsel for the State prays for dismissal of the present petition.

5. I have heard learned counsel for the petitioner and carefully gone through the record.

6. Admittedly, the present FIR was registered against the petitioner and his accomplices on the allegations that on 15.04.2021, complainant-SI Satya Prakash along with other police officials was present near Dhidara By Pass, Tauru. He received a secret information that the petitioner along with his associates, namely, Mohan, Gajender @ Gajju and Ashok, who were wanted criminals were sitting and taking liquor in an old dilapidated room opposite Khushal Krishi Farm, main road Tauru, Khoru Kalan and if, a raid was conducted, they could be apprehended. Accordingly, after constituting a raiding party, the raid was conducted. On seeing the police party, the petitioner came out of the room while flashing his country made pistol and fired upon the police party but all the police officials escaped unhurt. In retaliation, the

complainant also fired a shot in the air. The petitioner after throwing his country made pistol, jumped over the boundary wall of the room and fell down in a ditch. He was apprehended by the police. Thereafter, another boy came out of the room and fired a gunshot upon the police party but the bullet passed just near to the ear of ASI Isrile, who also fired a gunshot in the air. The said accused threw his pistol inside the room and thereafter, was arrested, who disclosed his name as Gajender @ Gajju. The remaining two boys were also arrested by the police, who disclosed their names as Mohan and Ashok. As Javed @ Jabid, had jumped over the wall and fell into a deep pit, he suffered injuries on his left foot. He was taken to the hospital for treatment. A written complaint was drafted by SI Satya Parkash and the same was sent to the police station, on the basis of which formal FIR No. 102 dated 15.04.2021, under Sections 332, 353, 307 read with Section 34 IPC and Section 25 of the Arms Act was registered. Disclosure statements of all the four accused were also recorded.

7. During investigation, the petitioner had suffered a disclosure statement and he admitted that he had thrown country made pistol and a used cartridge and 'Sikka' of cartridge, which were taken into police possession by the Investigating Officer. The petitioner also got recovered three live cartridges from a room behind the service station of his uncle Fakruddin in village Khorl which were also taken into police possession. On the basis of disclosure statement of co-accused/Gajender @ Gajju, one country made pistol, one used cartridge and one 'Sikka' was also recovered from the room in which the accused were sitting at the

time of raid. Co-accused, namely; Mohan S/o Vedram and Ashok S/o Ganpat, were also interrogated who have also suffered their disclosure statement and they also admitted the commission of crime that they have assaulted the police at the spot.

8. So far as the injury received by the petitioner in the incident is concerned, suffice it to say that the petitioner after firing gunshot upon the raiding party, when jumped over the boundary wall of the abandoned room fell down in a ditch in which stones and bricks were lying and he sustained the injury. He was got admitted in Government Medical College, Nalhar.

9. Moreover, the antecedents of the petitioner are not good. He is a habitual offender and is involved in 39 more cases of similar nature as detailed in Annexure R-1 annexed with the reply filed by the respondent-State. The allegations against the petitioner are serious in nature. Such people need to be dealt with a strict hand in order to maintain law and order in the society. There is an apprehension, if the petitioner released on bail, he may commit a similar offence or may abscond. It has been observed by the Hon'ble Supreme Court in case ***Gudikanti Narasimhulu Vs. Public Prosecutor, High Court of A.P. : (1978) 1 SCC 240*** that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

10. The facts and circumstances of the judgments relied upon by learned counsel for the petitioner are quite distinguishable from the facts of the present case because every case has its own peculiar facts and circumstances. Therefore, no benefit of the same, whatsoever, can be given to the petitioner.

11. Keeping in view the totality of facts and circumstances of the case aforementioned, gravity of offence and antecedents of petitioner-Javed @ Jabid, this Court is of the considered opinion that he does not deserve the concession of regular bail. Hence, the present petition is hereby dismissed.

12. Any observation made here-in-above is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

20.03.2023

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**(ASHOK KUMAR VERMA)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No