

CRM-M-7796-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-7796-2023 (O&M)

Date of decision: July 14, 2023

Bijender @ Kala

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Ajay Kadyan, Advocate for petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (ORAL)**CRM-26401-2023**

For the reasons stated in application, same is allowed subject to all just exceptions. Annexures P-7 to P-10 are taken on record.

Main case (O&M)

Petitioner seeks bail in criminal case bearing FIR No.254 dated 20.05.2022, registered under Section 307 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 25, 30 of the Arms Act, 1959 (for short 'Arms Act'), at Police Station Jind Sadar, District Jind.

2. Per prosecution version, complainant-Sunil @ Soni lodged a complaint to the effect that on 19.05.2022 at around 12:30 p.m., petitioner entered into an altercation with him without any reason and started thrashing him. Complainant informed his family members about this fight on mobile phone. Meanwhile, petitioner pulled out a revolver and fired a shot in his stomach. His uncle Kuldeep and Ankit also reached the spot on their motorcycle. Petitioner then pointed gun even at his uncle Kuldeep who too was hit with two bullets in his stomach. They were taken in a private vehicle to General Hospital, Jind for treatment, where Doctor referred them to Sapra Hospital, Hisar. An FIR was registered in this regard. Petitioner was later arrested and is behind bars since 19.07.2022.

3. Learned counsel for petitioner submits that complainant party was the aggressor and petitioner has been falsely implicated in this case. It is a case of version and cross-version. Petitioner had no intention to kill complainant as is evident from

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petitioner and others has been presented in the Court. Genesis of inter se dispute is an earlier FIR No.275 dated 28.08.2019 in which petitioner is complainant and is against the complainant in the present case Sunil @ Soni. Petitioner was star witness in that case and Sunil @ Soni tried to exert pressure on the petitioner to compromise the matter, for which petitioner was not ready. He also submits that co-accused, namely Suresh to whom alleged weapon i.e., revolver belongs, has already been granted concession of bail by learned trial Court, as is reflected from the challan.

4. On the other hand, learned State counsel, on instructions from SI Yashvir Singh opposes the bail petition. He submits that petitioner has committed a serious offence. Petitioner is a habitual offender and his criminal antecedents suggest that if enlarged on bail, he is likely to commit similar offence again and/or flee from justice.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

6. *Prima facie*, it appears to be a scuffle between two old rival groups turned ugly and, both sides seem to have used weapons claiming that it was so done in their self-defence. Be that as it may, the same is matter of trial and culpability of delinquents can only be adjudicated after conclusion of trial. It transpires that not only version of the complainant was converted into FIR, but even cross-version also resulted in registration of another cross-FIR against the complainant party. Co-accused Suresh has already been granted concession of bail as is reflected from the challan/final report under Section 173(2) Cr.P.C. submitted by the police. The same is not controverted by the State. Learned State counsel, however, opposes bail petition stating that petitioner is a habitual offender. It turns out that there are though 8 other earlier cases, out of which, 5 were of compoundable nature and petitioner has been let off after imposition of fine while in 6th case, i.e., FIR No.364 dated 13.08.2019 of Police Station Narnaud, registered under Sections 147, 285, 506, 148 read with Section 149 IPC, petitioner was acquitted; and he is undertrial in the remaining two cases.

6.1. Be that as it may, on a Court query, it transpires that investigation is complete in present case, challan filed but charges are yet to be framed. There are total 21

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prosecution witnesses. Trial is ready commence. Petitioner is not required for custodial interrogation and he is being kept in judicial custody only on the suspicion of tampering with the evidence and/ or influencing the witnesses without any basis/foundation.

7. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Trial is likely to take long time. Whereas, petitioner has already been languishing in jail for the past about a year in preventive custody now, being behind bars since 19.07.2022. Petitioner is stated to be 38-year old, who has added responsibility of looking after his parents, who are in the age bracket of 65-70 years.

8. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.

9. Accordingly, petitioner is ordered to be released on bail, if not required in any other case, on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where his case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

10. In case, petitioner is found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.

11. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition alone and learned trial Court shall proceed without being influenced with this order.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 14, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No