

Ashwani @ Ganji

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:** Mr. Sanjeev Kumar, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner before this Court seeks his release as undertrial in a case bearing FIR No.1171 dated 16.12.2022, registered under Sections 323, 324, 307, 506 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') and Section 25 of Arms Act, 1959 at Police Station, HTM, Hisar.

2. FIR was registered on the statement of complainant Gagandeep. He stated that on 14.12.2022 at about 11:00 p.m. he along with his friends Ajay and Sahil, were at railway station, Hisar, when Vipin and Ashwani (present petitioner) descended on the scene and asked them to remove their motorcycle from where it was parked. They were about to leave but the accused started abusing them. Co-accused Vipin then gave fist blow on his mouth. Petitioner pulled out knife and hit it in the stomach of complainant. On hearing the noise, complainant's other friends tried to rescue him but the accused caused inflicted injuries on them as well. While leaving, they extended threat to kill complainant and his friends. Complainant was shifted to hospital for treatment. In course of investigation, while Vipin was arrested on 22.12.2022 and co-accused Deepak and petitioner on 27.12.2022. Since then they are in custody.

3. Learned counsel for petitioner submits that petitioner has not committed any offence. Allegations of the FIR are highly unnatural and improbable. Petitioner is not even seen in the CCTV footage. There is no question of thus his inflicting knife blow, as alleged qua him. Petitioner has been falsely implicated in this case.

3.1 Learned counsel for petitioner further submits that complainant was firstly taken to his house by his friends. It is much later that he went to hospital for treatment, which shows that there was no knife injury. He relies on medico legal report (MLR), which has been placed

on record and marked as Annexure 'A'. He submits that perusal of the same reveals that there is no such injury to show that any knife pierced the complainant's abdomen with knife. Yet, alleged knife injury attributed to the petitioner led to invoking Section 307 of IPC. He points out that that as per doctor's examination in hospital, stomach of complainant was merely found to be tense. Learned counsel for petitioner further submits that in any case, nothing is to be recovered from the petitioner and he is not required for further custodial interrogation.

3.2 He further submits that co-accused, namely, Vipin and Deepak have already been accorded the concession of bail by learned trial Court vide orders dated 09.03.2013 and 18.03.2023.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. Further submits that petitioner also admitted in his disclosure statement that he had an old rift with complainant Gagandeep and he stabbed knife in his stomach. Disclosure statement of petitioner is annexed as R-1. In case petitioner is granted concession of bail, there are chances of his fleeing from justice. He further submits that five other cases are pending against him. He is a habitual offender.

5. In rebuttal, learned counsel for the petitioner submits that out of five, in three cases, he has already been acquitted.

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

7. On a Court query, under instructions from ASI Sandeep Singh, learned State counsel submits that challan against petitioner was presented on 15.02.2023 and charges were framed on 01.04.2023. Investigation is thus complete *qua* petitioner, he is not required for custodial interrogation. Allegations against petitioner are a matter of trial at this stage. Out of 12 prosecution witnesses, two have been examined till date. Conclusion of the trial is likely to take quite sometime as it is proceeding at a snail pace.

8. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas petitioner has already been languishing in jail for 07 months and 28 days, being behind bars since 27.12.2022. Petitioner is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/or influence witnesses.

9. Petitioner is stated to be 25-year old family person and only bread winner of his family members, who are living in penury in his absence. He has added responsibility of his

widowed mother. Being a family man with responsibilities and fixed abode, it is unlikely that he is flight risk or will flee from the trial proceedings.

10. Co-accused of the petitioner have also been already accorded concession of bail.
11. 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.
12. Accordingly, petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of Ld. 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.
13. 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.
14. 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.
15. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

25.08.2023
vandana

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