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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-30948-2023 (O&M)

Date of decision: August 18, 2023

Vinod Bidhuri

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Ashit Malik, Advocate for 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 an undertrial in a case bearing FIR No.434 dated 10.11.2021, registered under Sections 120-B, 148, 302, 307 read with Section 149 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 25, 27 of the Arms Act, 1959 (for short 'Arms Act'), at Police Station, Kotwali Faridabad, District Faridabad.

2. According to the FIR/prosecution's version, on 02.11.2021, Mustak (complainant's brother) informed the complainant, named Mumtaz, that he was near the Biryani shop at Akash Hotel along with his friends Narender, Jagbinder alias Jaggu, and Sagar. Soon after, Bara, Shyam Mishra alias Mona Pandit, Chandan, and Bholi arrived in a white Santro car and parked it near them. They threatened Mustak, stating that they had previously broken his hand and leg, but this time, they intended to kill him. As it turned out, on November 10, 2021, the complainant was informed that when Mustak and his friends were having biryani, two young men arrived on a bike fired gunshot at Mustak and Mubarik. Mustak attempted to flee but was shot again, causing him to collapse in the street. The attackers continued to fire shots at Mubarik even after he fell down. Mubarik sustained a gunshot wound to his leg. His brother later arranged for Mubarik to be admitted to Escort Fortis Hospital to receive medical treatment. The two assailants, who fired gunshots, fled the crime scene in a Scorpio car. It is alleged that while fleeing there were others individuals also in a Scorpio and a Creta car, namely Ajit Kalia, Vinod Bhiduri (petitioner), Chandan, Sandeep Bainsala, Shyam Mishra alias Mona Pandit, Bara,

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Puneet Pandit, Amit Bainsala, and Sumit alias Nonu. The motive for the attack is alleged to be revenge of past enmity. An FIR was registered. During investigation, petitioner was arrested as a suspect/conspirator on 21.11.2021 and is in custody ever since.

3. Learned counsel also *inter alia* argues that witnesses, namely Mubarik Ali (PW1), Arun(PW2) and Manish (PW3) have already been examined as prosecution witnesses and none of them have supported prosecution version *qua* role attributed to the petitioner. He further urges that on that basis alone, petitioner is likely to be acquitted in the trial. Testimonies of these witnesses are appended as Annexures P-1 to P-3 with the petition. As per complainant version in FIR, person riding on the pillion of the bike had fired gunshot on the deceased, whereas petitioner along with 8 others allegedly came on Scorpio and Creta vehicles. Counsel points out that on one hand complainant is not turning up for recording of his testimony despite grant of opportunity, resultantly trial Court has issued warrants against him for summoning him to record his testimony. He further submits that in any case, complainant is not an eyewitness and is merely aggrieved party being brother of deceased-victim. He had submitted a police complaint *qua* incident on the basis of hearsay of those who were alleged to be present at the crime scene. Those present at the crime scene i.e. eyewitnesses PW-1 and PW-2 have not supported the version of the complainant, he contends.

3.1. Learned counsel for petitioner submits that petitioner has been falsely implicated. Counsel further urges that nothing is to be recovered from the petitioner and no useful purpose would be served by keeping him behind bars. Learned counsel submits that challan was presented and charges were framed on 12.05.2022. Investigation *qua* petitioner is complete, he is thus not required for custodial interrogation.

3.2. Learned counsel further submits that co-accused of the petitioner, namely Chandan has already been granted concession of bail vide order dated 31.08.2022 (Annexure P-5) passed in CRM-M-32398-2022 by a co-ordinate Bench of this Court.

4. On the other hand, learned State counsel, on instructions from ASI Suresh Kumar, opposes the petition and submits that petitioner has committed a serious offence.

If enlarged on bail, there is every likelihood that he will commit similar offence and/or

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will flee from trial, and he might tamper with evidence or influence/ intimidate the witnesses. He submits that per custody certificate, there are 5 more cases pending against the petitioner, out of which, he is on bail in 3 cases. Apart from this, petitioner has been convicted in one case and acquitted in 2 other cases.

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

6. Allegations against petitioner are a matter of trial at this stage. On a Court query, learned state counsel informs that out of total 41 prosecution witnesses, only 03 have been examined so far. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been languishing in jail for the past more than 1 year and 8 months in preventive custody, being behind bars since 21.11.2021.

7. 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. There is no probability of tampering with evidence as the same has already been seized by the investigating agency.

8. Co-accused of the petitioner has also been granted concession of bail.

9. Apart therefrom, even prosecution witnesses PW1 to PW3 whose testimonies are placed on record have not supported prosecution version *qua* role attributed to the petitioner and it seems that trial may result in acquittal of the petitioner.

10. It is stated that petitioner is 31-year old family man and having fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

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, in case 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.

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13. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for limited purpose of bail hearing alone and learned trial Court shall proceed without being influenced with this order.
14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 18, 2023

mahavir

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No