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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-31151-2023 (O&M)

Date of decision: 31.07.2023

Bijender @ Billu

....Petitioner

versus

State of Haryana

....Respondent

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

Mr. Karan Garg, AAG, Haryana.

Mr. Vikas Lohchab, Advocate for complainant.

ARUN MONGA, J. (ORAL)

Aggrieved on being declined bail by learned trial court, petitioner seeks his release as undertrial in a case bearing FIR No.61 dated 13.02.2023, registered under Sections 148, 285, 323, 341, 427, 506, 307 read with 149 of the Indian Penal Code, 1860 (for short 'IPC') and Section 25 of Arms Act, 1959 at Police Station, Nangal Chaudhri, District Mahendergarh, Haryana.

2. Prosecution version of case, as per statement of the complainant recorded in FIR, translated copy of which is contained at Annexure P-2, relevant thereof, *in verbatim*, is extracted as below:

"... I Mayaram son of Shyam Lal Caste Gujjar am resident of Village Bhentdi Police Station Nangal Chaudhary, that on dated 12.02.2023 in the evening me along with Satish son of Jai Singh R/o Bhentdi went to Kasawati Khan Naka for taking his money of his diesel in Swift Car NoHR66C0808, that where Rohtash, Pardeep, Manoj Residents of Lujota and my village's Motilal, Hiralal son of Jagram, Deepak son of Ramjilal, Naveen son of Ramkaran and two other boys met, that all of above hurled vituperation to us and slapped us, that both of us took our car and came to the Petrol Pump of Village Bhentdi, that after halting at the Petrol Pump for some time in above mentioned vehicle me and Satish and Netram son of Maniram Resident of Bhentdi sat is, that all three of us were going to our home along with Car then Hiralal, Motilal, Naveen and Deepak in front of their house intercepted their Apache Motorcycle in front of our Car and assaulted us, that we escaped from them, we were going to our house outside the village then in between a camper came behind the car near the Government School and the assailants started firing in the air and hit the vehicle from behind on 5-7 times indiscriminately, due to collision the vehicle stopped in front of the Gate of the School, we all three alighted down from the Car as soon as we alighted all above named slapped and punched Netram and Satish and Manoj who was armed with Pistol fired shot upon my right feet, that upon hearing the clamour of the brawl, upon

seeing villagers coming all the above named while giving threat to kill us fled away while boarding the Camper, that we gave information at Police Station over phone and my family members admitted me in Constable for treatment, Government Hospital Head that legal action may be initiated against Rohtash, Manoj, Pardeep Residents of Lujota and Motilal, Hiralal, Deepak, Naveen Residents of Bhentdi and two unknown persons, this incidence occurred today at 12:15 AM.”

3. Learned counsel for petitioner submits that petitioner is falsely implicated in this case. Neither name of the petitioner is mentioned in the FIR nor any role has been attributed to him. No recovery is to be effected from the petitioner. He has been involved in the present case since Camper used in the commission of crime belongs to the petitioner. Petitioner is in custody since 19.02.2023. Challan has been presented and investigation is already over. Charges are yet to be framed. Trial is likely to take some time for conclusion.

3.1 Learned counsel for petitioner further canvasses that as many as 9 accused were implicated by name in the FIR assigning them specific role, but the petitioner was not named in the FIR at the time of recording version of the complainant and rightly so, contends the learned counsel, since to the knowledge of the complainant, there is no involvement of the petitioner. He further argues that merely because petitioner has some other alleged criminal antecedents which borders similar offences, he has been apprehended on the mere suspicion and attributed the role being a co-conspirator with the co-accused.

4. Per contra, learned State counsel on instructions from ASI Gajender opposes the bail petition and submits that petitioner has committed a serious offence. Learned State counsel relies on the confessional statement of petitioner contained at Annexure R-1 wherein it is stated that:

“... I and Rohtash, Manoj, Kuldeep alias KD's son Sitaram, Pradeep s/o Gurdayal and Naveen S/o Ramkaran, Motilal, Hiralal son of Jagram, Deepak son of Ramjilal were residents of Bhendati were present and Kuldeep had covered his face, Naveen etc. had village election rivalry with Satish and Mayaram and that's why we abused and slapped both of them. We thought of establishing our dominance in the village Bhedti as well, or at our behest, on the same night Hiralal, Motilal, Naveen and Deepak stopped the Apache motorcycle in front of Mayaram etc. car on the way in front of their house.”

4.1. He argues that there is a clear case of motive as made out in his own confessional statement, therefore, does not deserve concession of bail.

5. In addition, learned counsel for the complainant states that complainant had no occasion to name the petitioner in the FIR since he did not know the names of all the assailants at the relevant time, though it is clearly stated in his version that names of 7 persons were known to him and two unknown persons were involved in the commission of crime.

6. In rebuttal, learned counsel for the petitioner states that so-called aforesaid custodial confession of the petitioner (Annexure R-1) has no legal sanctity and is not admissible *per se* in the trial unless there is any corroborative statement under section 164 of the Cr.P.C. On the basis of such an alleged confessional statement, prosecution cannot secure conviction of the petitioner.

7. Learned counsel for petitioner further submits that petitioner is not a criminal, as has been made to look by the prosecution by giving his alleged criminal antecedents. It is merely an attempt to prejudice the Court to deny him bail. Petitioner is, in fact, agriculturist by profession, who helps his father in cultivation. The vehicle in question is used to transport the crops and fodder from time to time, which is cultivated on their own land.

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

9. On a Court query, learned State counsel submits that challan has been presented and charges are yet to be framed. Investigation *qua* the petitioner is complete. He is thus not required for any further custodial interrogation. Trial is likely to take along time. Allegations against petitioner are a matter of trial at this stage.

10. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been in jail for the past more than five months, he being behind bars since 19.02.2023. 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. It also appears to be a case of political rivalry.

11. Petitioner is a family person, having fixed abode and there is no likelihood of his fleeing from trial proceedings.

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

13. 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.

14. 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.

15. 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.

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

(ARUN MONGA)
JUDGE

31.07.2023
Vandana

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