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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-31997-2023 (O&M)

Date of decision: August 10, 2023

Naveen Kumar @ Mohit @ Jahri

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Aakash Dalal, 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 undertrial in a case bearing FIR No.295 dated 06.10.2022, registered under Sections 201, 307 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') and Section 25 of the Arms Act, 1959 (for short 'Arms Act'), at Police Station, Sadar Charkhi Dadri, District Charkhi Dadri.

2. Per prosecution version, on 04.10.2022, complainant-Arun had organized a religious function ('*Swamani*' in the common parlance), and at around 11:00 p.m., three boys came on a motorcycle and stopped it near the complainant. One Bhagat alighted from the motorcycle and yelled '*Tere Ko Choudhary Banate Hain*'. In the meantime, pillion-rider of the motorcycle pointed pistol towards complainant and fired a bullet, which hit on his right hand. Complainant was removed to Government Hospital, Charkhi Dadri, on 05.10.2022, from where doctor referred him to PGIMS, Rohtak. During investigation, petitioner was arrested on 17.10.2022 and he is in custody since then.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated on the basis of disclosure statement of co-accused. He submits that alleged recovery of pistol used in the offence was recovered from the co-accused, namely Anand. He further contends that FIR in question was registered after a delay of 2 days i.e., on 06.10.2022, whereas alleged occurrence took place on 04.10.2022. He also contends that

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petitioner was not named in the FIR. There is nothing to show that petitioner caused any injury to anybody.

3.1. Learned counsel further contends that nothing is to be recovered from the petitioner and no useful purpose would be served by keeping him behind bars. There is no other case against the petitioner.

4. On the other hand, learned State counsel, on instructions from ASI Anil Kapoor, opposes the petition and submits that petitioner has committed a serious offence. Petitioner had accompanied the co-accused, when gunshot was fired at the complainant by the co-accused. He further submits that common intention on the part of petitioner cannot be ruled out at this stage. If released on bail, he might tamper with evidence or influence/ intimate the witnesses and also flee from trial. However, he admits that there is no other case against the petitioner.

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

6. Status report by way of an affidavit dated 08.08.2023 has been tendered in course of hearing by learned State counsel, which is taken on record. Perusal of the same reveals that only role attributed to the petitioner is that he accompanied prime-accused who allegedly fired gun-shot resulting in injury to the complainant/ victim. That aside, it also states that there is no other criminal antecedent of petitioner and he has been under arrest on account invocation of Section 34 of IPC.

6.1. On a Court query, learned State counsel submits that challan *qua* petitioner and other co-accused was presented and charges were framed on 22.02.2023. Out of total 32 prosecution witnesses, only one has been examined so far. Investigation is complete, he is thus not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against petitioner are a matter of trial at this stage. Conclusion of trial is still likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for the past more than 9 months in preventive custody, being behind bars since 17.10.2022.

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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. It is stated that petitioner is a 24-year old young student and his continued incarceration may jeopardize his career prospects and he may also rendered jobless forever. Being a family man, having fixed abode and clean antecedents, it is unlikely that petitioner will flee from trial proceedings.
9. 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.
10. 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.
11. 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.
12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 10, 2023
mahavir

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