

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

217 3rd case

CRM-M-34940-2023 (O&M)

Date of decision: 23.08.2023

Himanshu

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rakesh Kumar Lathwal, Advocate for the petitioner.

Mr. Karan Garg, AAG, Haryana.

ARUN MONGA, J. (Oral)

After being declined bail by learned trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.373 dated 29.06.2022, registered under Sections 285, 386, 436, 506 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') and Section 25 of Arms Act, 1959 (Section 120-B of IPC subsequently added) at Police Station, Gohana Sadar, District Sonipat.

2. Case of the prosecution is that on 28.06.2022, SI Om Parkash was on night patrolling duty along with his colleagues. He got information that a liquor vend burning incident has taken place in village Awali. When he went there, along with his colleagues, the salesman Manoj at the liquor shop told him that formal police complaint, after having talk with owner, would be filed. Fire Brigade was called.

2.1. Subsequently, complainant namely, Krishan gave a police complaint stating that he has taken the liquor vend on contract for the Farmana Zone and is operating it in partnership with another person named Rajender. The village of Awali falls within this zone. They have employed Manoj as their salesman. On the 28th of June, 2022, three unidentified individuals arrived on a motorcycle. At that time, the salesman had gone outside to ease himself at some distance and when he was returning to the liquor vend, he saw the miscreants armed with pistols. He got

scared and concealed himself in the nearby bushes. The accused fired from the pistol twice at the liquor vend and set the liquor vend ablaze by sprinkling petrol. The salesman managed to escape from the liquor vend. They also threatened to kill him, asserting that if they intended to continue operating the liquor vend, they would be required to pay them a 30% commission; otherwise, face the dire consequences. FIR was registered. Deepak and Himanshu (present petitioner) were arrested and, while in custody, they allegedly confessed of their guilt of having committed the crime in question. Pistol and motorcycle used in the occurrence were recovered from co-accused Deepak as per his disclosure statement. Petitioner is in custody since 20.07.2022.

3. Learned counsel for petitioner contends that neither is there any loss to the life nor property. In fact, petitioner had merely gone to purchase some liquor and due to some heated altercation verbal assault ensued from both sides. No physical assault has either been alleged nor was resorted to by any of the accused. The allegation *qua* burning of the shop is also incorrect as no such fire incident took place by sprinkling petrol or otherwise by the petitioner. It is all a concocted narrative. Petitioner is not even named in the FIR.

3.1. Learned counsel for petitioner also submits that nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/or influencing prosecution witnesses.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. He would argue that petitioner is set up by one of the business rivals of the complainant, who is also into liquor business and it is on account of the old business rivalry that shops of the complainant were sought to be torched by petitioner and co-accused. They are the actual miscreants and committing the offence in question. In case, petitioner

is granted concession of bail, there are chances of his fleeing from justice. He further submits that two other cases of similar nature are pending against the petitioner.

5. On a Court query, learned State counsel, on instructions from SI Satbir, submits challan was presented on 17.09.2022. Investigation *qua* petitioner is complete and thus he is not required for any further custodial interrogation. Charges are yet to be framed. Allegations against petitioner are matter of trial at this stage. There are 24 prosecution witnesses. Commencement/conclusion of trial is still likely to take long time. 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 about 01 year and 01 month, being behind bars since 20.07.2022.

6. 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.

7. Petitioner is stated to be a young boy, aged 18 years and is on the cross-roads of his career and his future is getting severely jeopardized due to prolonged incarceration. Having got a family and fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

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

9. 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.

10. In case, petitioner is found to be involved or get 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

23.08.2023
vandana

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