

CRM-M-36672-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 19.09.2023

Wakeel

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ravi Malik, Advocate for the petitioner.

Mr. VikasBhardwaj, 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.221 dated 04.11.2022, registered under Sections 148, 149, 323, 341 and 307 IPC and Section 25 of the Arms Act (Section 392 IPC was deleted and Section 427 IPC was added later on) at Police Station Bicchor, District Nuh.

2. Per prosecution version, complainant Sahid stated that on 02.11.2022 at about 12:00 noon, he along with his family members were on way to village school to caste their vote. Assailants Sabbir, Wakil (petitioner herein), Juber and Khalid armed with weapons waylaid them physically assaulted them. He further alleged that petitioner fired a gun shot on one of his family member namely Imran injuring him while other co-accused of petitioner also fired shots which narrowly missed the target. Family members of complainant were also stopped for casting their votes. FIR was registered. Petitioner along with co-accused Wasim was arrested on 16.12.2022.

3. Learned counsel for the petitioner submits that FIR was registered on the basis of false, fabricated and concocted version of complainant. Petitioner was named in FIR due to party fiction in the village during the Sarpanch election.

There is contradiction in the statement of complainant and medical reports which makes prosecution case highly doubtful. Further submits that there is delay of 02 days in lodging the FIR.

3.1 He further submits that initially FIR was registered against 102 persons and out of them, 89 were found innocent by the police during investigation.

3.2. He further submits that petitioner is in custody since 16.12.2022 and challan has already been presented. Conclusion of trial will take long time. Thus, no useful purpose would be served by keeping the petitioner behind the bars.

3.3. He argues that co-accused of petitioner namely Jakir @ Jakar, Khalid and Waseem have been granted the concession of bail by learned Court below vide order contained at Annexures P-5 to P-7, respectively. Thus, he is entitled to concession of bail. No other case is pending against him.

4. Per contra, learned State counsel strenuously opposes the petition. He submits that petitioner has committed a serious offence and has played an active role in the incident..If enlarged on bail, there is everylikelihood that petitioner will commit similar offence and/or will flee from trial.

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

6. On the previous date of hearing, matter was heard earlier also when learned State counsel was asked to seek instructions if the ballistic report connects the bullet which was fired at the injured, with the gun which was recovered from him. *Apropos*, he states under instructions from SI Satyanarayan, that the empty cartridge of the bullet as well as the gun was both recovered from the petitioner based on his disclosure statement. He does not controvert that the empty cartridge was not recovered from the scene of occurrence, but only subsequently during investigation. He is unable to readily respond as to why would the petitioner carry

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the empty cartridge of the bullet with him, which was allegedly fired in the incident in question.

6.1 Be that as it may, it transpires that out of 102 accused initially arrayed in the FIR, 89 during course of investigation have been declared innocent and out of the rest, 06 accused have already been accorded the concession of bail (04 by the learned trial Court (regular bail) and 02 by this Court vide order dated 14.09.2023 passed in CRM-M-45940-2023 (anticipatory bail).

6.2 Learned State counsel does not controvert the aforesaid.

7. On a Court query, learned State counsel, on instructions, submits that submits that challan was presented on 15.03.2023 and charges have been framed on 29.04.2023. Investigation *qua* petitioner is complete, he is thus not required for custodial interrogation. Allegations against petitioner are a matter of trial at this stage. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Out of total 21 witnesses, none has been examined till date. Trial is proceeding only at a snail's pace. Whereas, petitioner has already been languishing in jail for the past more than 09 months in preventive custody, being behind bars since 16.12.2022.

8. 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.

9. It is stated that petitioner is 22 yearsold agriculturist and a married person having two minor children He has also added responsibilities of his old aged parents, who all are living in sheer penury in his absence. Being family man and having fixed abode, it is unlikely that they pose any flight risk and/or will flee from trial proceedings.

10. 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.
11. 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 cases is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.
12. 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.
13. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 19, 2023
Ajay

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