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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-37762-2023 (O&M)

Date of decision:31.08.2023

Atma Ram

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Jitender Dhanda, Advocate
for the 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 a case bearing FIR No.20 dated 16.01.2019, registered under Sections 307, 302, 506, 147, 148 read with Section 149 of IPC and Section 25 of Arms Act at Police Station, Azad Nagar, District Hisar.

2. Per prosecution case, on January 15, 2019, at approximately 7:00 p.m., the complainant, Pawan Kumar, the son of Layak Ram, arrived home from his office. His friend, Sunil, the son of Pawan Kumar, had come to visit him. After having tea, both of them went to the residence of Bansilal, the uncle of the complainant Pawan, to meet him. Upon their arrival, they saw that Bansilal was plowing the fields with his tractor. Alongside Bansilal, his son Sunil and 5-6 other boys were present.

2.1 On the opposite side, there were 5-6 women, accompanied by Hansraj and Rajender Balla, the sons of Narsi, as well as Madan Lal, the son of Jagar, all of whom were holding sticks in their hands. They launched an attack on Bansilal and the boys present, inflicting injuries on them using their sticks. When the complainant and his friend intervened to protect them, one of the assailants, identified as Chandi Ram, the son of Jagar, fired a gunshot from the Dhani side. Bullet hit a boy between his neck and head. The petitioner, Atma Ram, also allegedly fired shots from his firearm. One gunshot hit the complainant in the shoulder, and some pellets hit Sunil, the complainant's friend, in the neck and face. Ramesh, the son of the petitioner Atma Ram, also fired gunshots from

his firearm. As the complainant was on the verge of losing consciousness, Bansi Lal and his son Sunil tended to them, along with another individual named Parmod, who had also sustained gunshot injuries. They transported the injured parties to Mahatma Gandhi Hospital in Hisar, where the complainant, Sunil, and Parmod were admitted. Later, Parmod succumbed to his gunshot injury. Petitioner was arrested on 26.01.2019 and is in custody ever since.

3. Learned counsel for the petitioner submits that it is a case of version and cross-version. An FIR No.0023 dated 20.01.2019 was registered against complainant party on the basis of statement made by Rajender Singh wherein he clearly stated that about 40-45 persons had openly attacked on their *Dhani*, and in self defense, his brother Atma Ram (present petitioner) was forced to fire gunshot with his licensed weapon. He further submits that complainant and injured eye-witness Bansi Lal has clearly stated that the fatal shot received by deceased was fired by Chandi Ram and not by the present petitioner. Cross case registered by Rajender vide FIR No.23 dated 20.01.2019 has been committed to the Court of Session by the learned Illaqa Magistrate vide an order dated 18.08.2021 and clubbed with the present case to be decided together, since both the cross FIRs are qua the same incident.

3.1 He further submits that no recovery is to be or has been effected from the petitioner. No specific role is attributed to the petitioner. He is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/or influencing prosecution witnesses. Petitioner is totally innocent and has thus been falsely implicated in the case.

3.2 Learned counsel for the petitioner further submits that co-accused of the petitioner, namely, Ramesh, who has been attributed with the same allegation, having fired a gun shot as the petitioner herein, has been accorded concession of bail by a coordinate Bench of this Court vide order dated 14.02.2023. He further states that petitioner's case is on much better footing and yet, he continues to be in jail. He further submits that though prosecution evidence has concluded in the present case, however, in

a cross-case arising out of the same incident, trial is yet to begin, causing delay in final conclusion of the trial.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice.

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

6. On a Court query, under instructions from SI Ramesh Kumar, learned State counsel does not controvert that co-accused attributed with similar role, has been granted concession of bail by a coordinate Bench of this Court vide order dated 14.02.2023.

7. He informs that challan was filed on 23.04.2019 and charges were framed on 02.08.2019 and all the 25 prosecution witnesses have been examined and now the case is fixed for defence evidence. However, in a cross-case arising out of the same incident, trial is yet to begin, causing delay in final conclusion of the trial.

8. 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. Whereas, petitioner has already been languishing in jail for more than 04 years and 7 months, being behind bars since 26.01.2019. He 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.

9. Petitioner is stated to be 35-year old family person having wife and four minor children. Being a married person with family responsibilities and fixed abode, it is unlikely that he poses 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 on his furnishing bail bonds and surety bonds to the satisfaction of Ld. 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.

12. 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.

13. 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.

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

(ARUN MONGA)
JUDGE

31.08.2023
vandana

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