

CRM-M-39208-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 20.09.2023

Rahul Kukreja

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Diwan S. Adlakha, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

Mr. Ajay Kirpal Singh, Advocate for the complainant.

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.595 dated 06.10.2022, registered under Sections 216, 302, 323, 452, 506, 148 read with Section 149 of the Indian Penal Code and Sections 25 and 27 of the Arms Act, 1959 at Police Station, Tehsil Camp, Panipat, District Panipat, Haryana.

2. According to the prosecution's account, Jogender, a resident of Deshraj Colony in Panipat, alleged an old feud with Parveen, the son of Sunil. On October 6, 2022, around 12:15 a.m., Parveen and other accomplices entered Jogender's house and confronted his father, who was asleep in his room. In response, Jogender, along with his father and brother, went to Parveen's house. As they approached the street, Parveen and his family members began hurling bricks from their rooftops. While attempting to escape, Parveen fired a gunshot from his gun (doga), and Sadhu and Maha fired multiple shots from their homemade pistol. Tragically, one of these shots struck Jogender's brother, Dinesh, in the chest and shoulders, leading to his demise. Dinesh was rushed to the Government Hospital, where doctors pronounced him dead. Subsequently, an FIR was filed, Section 174

Cr.P.C. proceedings were initiated, witness statements were recorded, and an investigation commenced. Accused Sadhu, also known as Babu, was apprehended, and during the investigation, the petitioner was implicated as an accused based on the disclosure statement of co-accused individuals, namely Shintu (Chintu) and Rakesh. The petitioner was subsequently arrested on November 17, 2022.

3. Learned counsel for the petitioner contends that petitioner was neither named in the FIR nor connected with the alleged offence. Moreover, there is inordinate and unexplained delay of 07 hours in lodging the FIR. Further submits that no specific role or injury either on the person of deceased or on the alleged injured has been attributed to petitioner. Injury attracting offence under Section 302 IPC, which led to death of deceased, has been attributed to co-accused Parveen @ Baru. Per post mortem report, cause of death of deceased is stated to be gunshot injury.

3.1 He further submits that involvement of petitioner is highly doubtful as none of the eyewitnesses have alleged anything with regard to involvement of petitioner in the alleged commission of crime. He further asserts that it would be a debatable issue whether petitioner shared the common intention or caused any alleged injury in furtherance of common object or not and the same would be ascertained during the course of trial.

3.2 Further submits that petitioner has no role to play in alleged commission of offences as he was neither present nor participated in the alleged occurrence. There is nothing on record to show that petitioner was accompanying the other accused at the time of alleged incident. No other case is pending against him.

3.3 He further submits that petitioner is in custody since 17.11.2022 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.

4. Per contra, learned State counsel strenuously opposes the petition. He submits that petitioner is involved in a serious offence and played active role in the incident. He further states that prosecution has gathered sufficient evidence against petitioner. If enlarged on bail, there is everylikelihood that petitioner will commit similar offence and/or will flee from trial. He, however, admits that petitioner is not involved in any other case.

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

6. On a Court query, learned State counsel, on instructions from SI Satish Kumar, submits that challan was filed on 23.12.2022 and charges have been framed on 27.03.2023. 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 40 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 10 months in preventive custody, being behind bars since 17.11.2022.

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.

8. Petitioner is stated to be 25-year old labourer and a married person. He has also added responsibilities of his old aged parents, who all are living in sheer penury in his absence. Being family man, having fixed abode and clean antecedents, it is unlikely that they pose any flight risk and/or will flee from trial proceedings.

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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 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

September 20, 2023
Ajay

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