

CRM-M-42286-2023 (O&M)

217

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-42286-2023 (O&M)

Date of decision: October 19, 2023

Suresh @ Fauji

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Amit Choudhary, Advocate for petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (ORAL)

Reply by way of affidavit dated October 12, 2023 has been tendered in course of hearing by learned State counsel, which is taken on record.

2. Following the denial of bail by the learned trial Court, the petitioner is now before this Court seeking his release as an undertrial in a case FIR No.168 dated September 02, 2020, registered under Sections 120-B, 325, 212, 201, 302, 440, 459, 395, 148 read with Section 149 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and Section 25 of Arms Act, 1959 (hereinafter referred to as 'Arms Act'), at Bhattu Kalan Police Station in Fatehabad.

3. According to the prosecution's account, on September 1, 2020, the complainant, Dinesh Kumar, along with Sandeep, Anil, and Jasbir, were present in the office situated in a liquor vend. At around 8:00 to 8:15 p.m., three vehicles stopped in front of the office, and Ramesh, Leelu Ram, Mewa Singh, Sahil, along with 10 to 12 unknown individuals, got out of these vehicles. Co-accused Sahil was armed with a pistol, while the others were carrying iron rods. Co-accused Ramesh then instructed them to exit the office. Subsequently, Ramesh, Leelu, Mewa Singh, and Sahil entered the office, with Sahil declaring that they were sent by Jaiveer for revenge. Ramesh fired his pistol toward Sandeep, while Leelu, Mewa Singh, and Sahil also fired from their respective pistols. Ramesh's shot hit Sandeep in the stomach, Leelu's shot hit Sandeep's left arm, Mewa Singh's shot landed on Sandeep's right foot, and Sahil's shot hit the office wall. The accompanying 10-12

CRM-M-42286-2023 (O&M)

unidentified individuals, armed with iron rods, also attacked, causing injuries to Anil's head and other parts of his body. They ransacked the entire office and stole Rs. 2.5 lakh, which was in the office. Sandeep succumbed to the gunshot injuries when taken to the hospital. Injured Anil underwent a medico-legal examination. During the investigation, the petitioner was arrested on June 15, 2021, and has been in custody since then.

4. Firstly, the learned counsel for the petitioner argues that the co-accused, Subhash Chander, Vikram @ Pawan Kumar, Rakesh @ Raka were granted bail on November 10, 2022, Virender @ Binder, Sudhir were granted bail on February 06, 2023, Sanjay was granted bail on May 24, 2023, and Himmat Singh was granted bail on May 29, 2023, by a co-ordinate Bench of this Court. He also argues that another co-accused, namely, Satbir @ Bittu @ Satbir Singh, was granted bail by this Court via an order dated October 10, 2023, passed in CRM-M-46709-2023.

4.1. The learned counsel also refers to the testimony of Anil Kumar (PW1) and Dinesh Kumar, the complainant (PW-2), who were eyewitnesses to the crime scene, as per the prosecution version, contained at Annexure P-3, and states that they have not supported the prosecution's version regarding the role attributed to the petitioner in firing the fatal shot that resulted in the death of the deceased. He further asserts that based on the aforesaid testimonies, it is likely that the trial will result in the petitioner's acquittal, claiming that the petitioner has been wrongly accused in this case.

4.2. The learned counsel also contends that neither the petitioner was named in the FIR nor was any specific role attributed to him. The petitioner has been implicated based on the custodial disclosure statement of a co-accused, namely, Jaivir, and said custodial confession taken in custody is per se not admissible in evidence, particularly in view of the eyewitnesses not supporting the prosecution's case.

4.3. Learned counsel appearing for the petitioner relies on the Apex Court's judgment in the case titled **Hasanujjaman and others Vs. The State of West Bengal**¹ to contend that apart from the merits, merely on the ground of the duration of custody, the petitioner is entitled to bail. He further relies on the Apex Court's judgment in the case titled

CRM-M-42286-2023 (O&M)

Sanjay Chandra versus CBI² to contend that imprisonment before conviction has a substantial punitive content.

4.4. Finally, he contends that nothing needs to be recovered from the petitioner, and he is not required for further custodial interrogation. There is no likelihood of the petitioner tampering with evidence or influencing prosecution witnesses, and the petitioner is not involved in any other case.

5. On the contrary, learned State counsel strenuously opposes the petition, expressing concerns about the possibility of the petitioner fleeing from trial proceedings if granted bail. Also argues that the petitioner has committed a serious offense. On a Court query, he does not controvert the grant of bail to the co-accused and complainant and eye-witnesses having not supported prosecution case *qua* role attributed to the petitioner having fired gunshot, as aforesaid. He however, submits that petitioner is involved in 04 other cases.

6. I have heard the rival arguments and reviewed the case file.

7. In response to a query from the Court, under instructions from SI Rameshwar Dayal, learned State counsel informs that the challan has already been filed and charges were framed on June 04, 2023. Thus, the investigation regarding the petitioner is complete, and he is not required for custodial interrogation.

8. At this stage, the allegations against the petitioner are subject to trial. Of the fifty prosecution witnesses, only four have been examined so far. The trial's progress has been slow, and it is anticipated to take a considerable amount of time. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since June 15, 2021, for more than 02 years and 04 months.

9. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that he might tamper with evidence or influence witnesses. There is no probability of tampering with evidence as it has already been seized by the investigating agency.

10. Co-accused of the petitioner have already been granted bail, as aforesaid.

11. The petitioner is stated to be a 33-year-old person and having a fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

13. Accordingly, the petitioner is ordered to be released on bail, in case not required in any other case, upon furnishing bail bonds and surety bonds to the satisfaction of the learned trial Court, where his case is being tried, and in case he/she is not available, before the learned Duty Judge, as the case may be.

15. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on the merits of the case, as they are for the limited purpose of the bail hearing alone, and the learned trial Court shall proceed without being influenced by this order.

(ARUN MONGA)
JUDGE

Yes/No