

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-47876-2022
Date of Decision: 26.05.2023

AMAN

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Devender Kumar, Advocate
for the petitioner.

Mr. Ram Kumar Singla, A.A.G., Punjab.

HARSH BUNGER, J.

Prayer in this petition is for grant of regular bail to the petitioner in case FIR No. 98 dated 29.03.2021 registered under Sections 302 read with Section 34 of the Indian Penal Code, 1860 (for short 'the IPC') and Section 25 of Arms Act, 1959 (Section 341 of the IPC and Section 27 of Arms Act added later on and Section 25 of Arms Act has been deleted) at Police Station Gadpuri, District Palwal (Annexure P-1).

2. Status report dated 06.12.2022 by way of an affidavit of Shri Anil Kumar, HPS, Deputy Superintendent of Police, Palwal, District Palwal, on behalf of respondent-State has been filed, which is already on record.

3. Custody certificate dated 22.03.2023 of the petitioner has been filed by learned State counsel, which is already on record.

4. Succinctly, the above said case FIR has been registered on the statement of one Mukesh son of Om Prakash, resident of Village Janoli, Police Station Gadpuri, District Palwal, stating therein that he is working as a driver for a school bus. It is alleged that on the occasion of Holi i.e. on 29.03.2021, at about 12:00 P.M. a fair was organized in the Chaupal of their village. As per complainant, he along with his uncle Jawahar, his brother Praveen and several other persons were watching the said fair and one Janak son of Dharam Singh @ Dharam Jaat, Akash son of Bijju, Bhola son of Billu, Kapoor resident of Faridabad, were also present there. Allegedly, Janak son of Dharam fired in air from a country made pistol and on stopping Janak for the same, a verbal duel took place between Praveen and associates of Janak. Thereafter, when Praveen reached at chowk from Chaupal; complainant-Mukesh, his uncle Jwahar, his father Om Prakash, Harkesh son of Ram Chander, Ajay son of Mangal dev and Sagar son of Rajender, all residents Village Janoli also reached at the same chowk. At about 12:30 p.m., Janak, Aakash, Bhola and Kapoor came from the residence of Gharmu son of Umed to the said chowk armed with country made pistols and Janak fired directly upon Praveen which hit him on his right side and he fell down on the road. Seeing this, all four fled away from the place of occurrence. Praveen was taken to Apex Hospital and Guru Nanak Hospital from where he was referred to Government Hospital, where he was declared dead.

5. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case on the basis of disclosure statements of co-accused, namely Janak and Kapoor by saying that the petitioner supplied cartridges to them which they used to fire at Praveen. It is

submitted by the learned counsel for the petitioner that the complainant-Mukesh (brother of the deceased), appeared before the trial court as PW 1 on 21.07.2022 and identified the petitioner but stated that he had not named the petitioner in the complaint as well as his deposition. Learned counsel further submits that the petitioner has not caused any injury to the deceased nor any role has been attributed to him and the co-accused have falsely implicated the petitioner in order to take revenge as he informed general public that both (Janak and Kapoor) were wanted in the murder of Praveen. It is stated that the petitioner has been in custody since 26.04.2022; investigation of this case is complete; challan under Section 173(2) of Cr.P.C. stands presented on 07.07.2021 and during further investigation accused Akash and Bhola were declared innocent and on completion of further investigation, supplementary challan under Section 173(8) of Cr.P.C was filed against the petitioner. Even charges against the petitioner have been framed on 21.07.2022 under Section 302 of IPC read with Section 34 of IPC. Learned counsel for the petitioner submits that the trial would take some time and no useful purpose would be served by keeping the petitioner behind the bars and there is no other criminal case pending against him. It is stated that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court; accordingly prayer for grant of regular bail is made.

6. Per contra, learned State counsel has opposed the plea of the petitioner for grant of regular bail on the ground of seriousness and gravity of offence. It is submitted that the petitioner was actively involved in the commission of crime and his name has surfaced on the basis of disclosure statements of co-accused. Learned State counsel submits that in case the

petitioner is enlarged on bail then he might influence the witnesses. However, it is not disputed that the petitioner has been in custody for the last 10 months and 27 days (as on 22.03.2023); challan has already been presented against the petitioner and even charges have been framed. It is also not disputed that there is no other case pending against the petitioner.

7. I have heard learned counsel for the parties and perused the paper book; status report as well as custody certificate filed by learned State counsel.

8. Petitioner is a young boy of about 22 years of age and has not been named in the FIR nor any role has been attributed to him. The petitioner has been nominated as an accused on the basis of an alleged disclosure statements of other co-accused namely, Janak and Kapoor. As per the FIR, the fatal shot was fired by Janak directly upon Praveen, which hit him on his right side and he fell down. As per the petitioner, his co-accused named him by saying that the cartridges were supplied by him whereas, it is the stand of the petitioner that the said statement has been made by co-accused only to take revenge from him as he had circulated their photographs on the WhatsApp, informing general public that both of them were wanted in the murder of Praveen.

9. Be that as it may, the evidentiary value and admissibility of the disclosure statements of the co-accused against the petitioner would be a moot point, to be decided during the course of trial by the trial Court.

10. In the instant case, the petitioner was arrested on 26.04.2022 and since then, he is in custody. As per the status report, the investigation in this case is complete and the supplementary challan stands filed against the petitioner on 02.07.2022 and even the charges have been framed on

21.07.2022. There is no history of petitioner's previous involvement in any other criminal case. The final conclusion of the trial will naturally take some time.

11. So far as the apprehension expressed by learned State counsel that the witnesses could be influenced by petitioner, suffice it to state that in the event of any such conduct, the prosecution can always approach the competent court for cancellation of bail. Accordingly, it is observed that the State / Prosecuting Agency / State police shall be at liberty to observe the behaviour of the petitioner during bail period, and in case it feels that the petitioner is indulging in influencing any of the witnesses or tampering with the prosecution evidence in any manner or otherwise causing interference with the progress of trial, it shall be open for the State / Prosecuting Agency / State police to move the trial Court for cancellation of bail, which shall be decided by the trial Court on merits.

12. In view of the above, the instant petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate / trial Court concerned.

13. However, before release, the concerned Station House Officer be informed and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of the case and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would furnish his telephone number to the concerned Station House Officer and would keep his mobile location on. Petitioner shall appear before the police station concerned on every alternate Monday till the conclusion of trial in this case

and every time inform in writing that he is not involved in any other crime other than the case(s) mentioned in the present order.

14. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.50,000/- and deposit the same with the trial Court. The same would be liable to be forfeited as per law, in case of absence of the petitioner from trial without sufficient cause.

15. Nothing expressed here-in-above shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

16. The petition is accordingly disposed of.

May 26th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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