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

**CRM-M-49772-2022 (O&M)
Date of Decision: 20.03.2023**

Vijay

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Kuldeep Singh Siwach, Advocate
for the petitioner.

Mr. Amrik Narwal, DAG, Haryana.

HARSH BUNGER J. (ORAL)

CRM-8213-2023

The present application is filed for adding Section 25 of the Arms Act in the head note as well as in the prayer clause of the above mentioned petition.

For the reasons stated in the application, the Criminal Misc. Application is allowed as prayed for.

CRM-M-49772-2022

Prayer in the present petition, filed under Section 439 of the Code of Criminal Procedure, is for grant of regular bail to the petitioner in case FIR No.97 dated 07.02.2022, under Sections 323, 324, 341 and 34 of the Indian Penal Code, 1860 (Section 326 IPC added later on) and Section

25 of the Arms Act, at Police Station City Fatehabad, District Fatehabad.

Reply by way of Affidavit of Mr. Subhash Chander, H.P.S., Deputy Superintendent of Police, Head Quarters, Fatehabad, District Fatehabad (Haryana) has already been taken on record.

Custody certificate dated 19.03.2023 of the petitioner has been filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.

Brief facts of this case are that, the abovesaid FIR was registered on the statement of one Gaurav Kumar S/o Moman Chand, who stated that on 06.02.2022 at about 4:00 P.M, when he (Gourav Kumar) and one (Sandeep) were on their way to Bus Stand then the petitioner along with two unknown companions came on motorcycle and restrained their way. It is alleged that the petitioner (Vijay) was armed with *Kapa* and other two co-accused were having small *gandasi* in their hands. It is further alleged that all of them alighted from the motorcycle and started attacking Sandeep. It is further stated that when the complainant (Gaurav Kumar) tried to rescue Sandeep, petitioner (Vijay) asked him not to intervene in between, thereafter, the crowd started gathering there, however, Sandeep ran towards Thakar Basti and Vijay (petitioner) along with other two co-accused fled away from the alleged place of occurrence on their motorcycle with their weapons.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present FIR only because of the fact that there was an earlier dispute between the parties. Learned counsel further submits that the petitioner has not caused any injury as alleged in the present FIR. It is submitted that there is an inordinate delay of more than one day in lodging the FIR and the same was lodged after due deliberations. It is further

submitted that the petitioner has been in custody since 08.03.2022; investigation is complete and challan has already been presented on 04.05.2022 and supplementary challan was filed on 06.12.2022. It is submitted that charges were framed in this case and evidence of complainant (Gaurav Kumar) and injured (Sandeep) already stands recorded and the conclusion of trial would take some time. Learned counsel for the petitioner submits that the application for regular bail was wrongly dismissed by the Court of Sessions Judge, Fatehabad, vide order dated 03.09.2022 (Annexure P-2). 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.

Learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness of the offence and that the petitioner is involved in two more cases and is a habitual offender, however, it is fairly conceded that the petitioner has been granted bail in these two cases. It is also not disputed by learned State counsel that the petitioner has been in custody since 08.03.2022, investigation is complete; challan has already been presented; charges have also been framed and out of 19 witnesses, 3 witnesses have been examined including the complainant and injured.

I have heard learned counsel for the parties and perused the paper book as well as the reply filed on behalf of the State of Haryana and custody certificate filed by learned State counsel, in Court today.

In this case, the petitioner has been in custody since 08.03.2022 i.e. more than one year; investigation in this case is complete, the challan has already been presented, charges have been framed and out of 19 witnesses, 3

witnesses have been examined, including complainant-Gaurav and injured-Sandeep. The trial is likely to take long time and no useful purpose would be served by keeping the petitioner behind the bars.

So far as involvement of petitioner in two other cases is concerned, suffice it to say that the registration of other cases against the petitioner cannot be taken to be as the sole material consideration for the purpose of declining him the relief of bail. In this regard, reference can be made to the judgment rendered by Hon'ble Supreme Court in case of ***“Maulana Mohammed Amir Rashadi Vs. State of Uttar Pradesh and another”***, reported as ***(2012) 2 Supreme Court Cases, 382***, wherein it was observed as under:-

“It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

Keeping in view the aforementioned circumstances, 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 trial Court/Illaq Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case and any change in the address shall also be communicated to the concerned Station

House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity.

In addition, the petitioner (or any one 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 the absence of the petitioner from trial without sufficient cause.

Nothing expressed hereinabove 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.

The petition is accordingly disposed of.

20.03.2023*Himani***(HARSH BUNGER)
JUDGE**

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|--------------------------------|--------|
| 1. Whether speaking/reasoned : | Yes/No |
| 2. Whether reportable : | Yes/No |