

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

(208-2)

CRM-M-51136-2022

Date of decision: - 26.04.2023

Sunil Kumar**....Petitioner****Versus****State of Haryana****.....Respondent****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Manish Soni, Advocate, for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

Mr. Deepanshu Matya, Advocate, for the complainant.

VIKAS BAHL, J. (ORAL)

1. This is the first petition under Section 438 of Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.272 dated 22.08.2022, under Sections 147, 149, 285, 195A & 506 IPC and Section 25(B-1)(A) of the Arms Act, 1959, at Police Station Rajendra Park, District Gurugram.

2. On 15.11.2022, this Court was pleased to pass the following order:-

“Inter alia contends that in the present case the complainant is a leader of the ruling party in the State of Haryana whereas the family friend of the present petitioner, namely, Naveen Dahiya has recently joined the opposition party and the complainant is desirous of fighting elections against the family friend of the present petitioner. It is submitted that the present case is a case of no injury and the complainant, as per the FIR, had not even seen who had fired the gun shot outside his house. It is further submitted that Rakesh alias Billi, co-accused of the petitioner, had earlier filed an anticipatory bail bearing CRM-M-45169-2022, in which, notice of motion has been

issued and the same is now listed for 05.12.2022. It is also submitted that on an earlier occasion, i.e. 22.07.2022, the complainant had arrived and in a similar fashion fired upon one of the persons of the petitioner's side and complaint was given by Lokesh in which there was a specific allegation with respect to the complainant. It is further submitted that the petitioner was not even present at the time of occurrence and he was at his house along with his family members at the time of alleged occurrence which fact can be established from the CCTV footage, regarding which a representation dated 25.10.2022 has been given by the petitioner to the SHO, Police Station Rajendra Park, Gurugram. It is submitted that the offences other than the offences under Sections 195A, 506 IPC and Section 25 of the Arms Act, are bailable and for offences under Section 506 IPC and Section 25 of the Arms Act, the maximum sentence is upto 3 years whereas with respect to Section 195-A IPC, the maximum sentence is upto 7 years. It is further submitted that offence under Section 195-A IPC is not made out inasmuch as the allegation in the FIR is to the effect that the petitioner and other accused had threatened the complainant to withdraw the case. It is also submitted that withdrawing of the case would not fall under the definition of "giving false evidence" and thus, would not come within the ambit of the provisions of Section 195-A IPC. In the said regard, reliance has been placed upon the judgment of Calcutta high Court in **Ganesh Adhikari vs. State of West Bengal & Anr.** reported as **2014(36) RCR (Criminal), 276**. It is also submitted that under Section 195(1)(b)(i) Cr.P.C. there is bar of taking cognizance for offence under Section 195-A IPC inasmuch as said cognizance can be taken on a complaint made and FIR cannot be registered on the same. It is stated that the word "complaint" used in Section 195(1)(b) has been defined in Section 2(d) of the Cr.P.C. and the same would not include a complaint to the police. On the said aspect, reliance has been placed upon the judgment of the Hon'ble Supreme Court of India in **M.Narayandas vs. State of Karnataka** reported in **2003(11) SCC 251** and the Calcutta High Court in **Namita Mahanta Sarkar vs. State of West Bengal and another** reported as **2015(17) RCR (Criminal) 616**. It is also submitted that the petitioner will not cause any harm to the complainant and in order to show his bonafide, the petitioner is ready to give an undertaking to

the concerned area magistrate that the petitioner would not go within a radius of 500 meters around the house of the complainant. It is further submitted that a copy of the said undertaking will be given before the concerned area magistrate within a period of one week from today and a copy of the same would also be given to learned counsel for the complainant by learned counsel for the petitioner.

Notice of motion for 05.12.2022.

To be heard along with CRM-M-45169-2022.

In the meantime, in the event of arrest, the petitioner is ordered to be released on interim bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting / Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438(2) Cr.P.C.

(VIKAS BAHL)
JUDGE

November 15, 2022'

3. Learned counsel for the petitioner has submitted that in pursuance of the above-said order, the petitioner has joined the investigation.

4. Learned State counsel, on instructions from ASI Giriraj, has submitted that the petitioner has joined investigation and is not required for further investigation.

5. Learned State counsel as well as learned counsel appearing on behalf of the complainant have submitted that the conditions imposed in the order dated 15.11.2022 to the effect that the petitioner would not go within a radius of 500 meters of the house of the complainant be made absolute till the conclusion of the trial.

6. Keeping in view the abovesaid facts and circumstances more so, the facts which have been noticed in abovesaid order dated 15.11.2022 and also the fact that the petitioner has joined the

investigation and is not required for further custodial interrogation, the present petition is allowed and the interim order dated 15.11.2022 is ordered to be made absolute, subject to the petitioner not going within a radius of 500 meters from the house of the complainant till the conclusion of the trial.

7. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

8. It is made clear that in case the petitioner fails to comply with the any of the said conditions, it would be open to the State as well as to the complainant to move an application for cancellation of bail.

April 26, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No