

CRM-M-50235-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-50235-2023 (O&M)

Date of decision: October 10, 2023

Arun alias Anna

....Petitioner

versus

State of Haryana

....Respondent

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

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (ORAL)

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 caseFIR No.434 dated 10.11.2021, registered under Sections120-B, 341, 302, 307, 148 read with Section149 ofthe Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and Sections 25 and 27 of the Arms Act, 1959 (for short 'Arms Act'), at the Kotwali, Police Station in Faridabad.

2. According to the FIR/prosecution's account, on November 2, 2021, Mustak (the complainant's brother) informed the complainant, named Mumtaz, that he was near the Biryani shop at Akash Hotel with his friends Narender, Jagbinder (alias Jaggu), and Sagar. Soon after, Bara, Shyam Mishra (alias Mona Pandit), Chandan, and Bholi arrived in a white Santro car and parked it nearby. They threatened Mustak, claiming they had previously harmed him, but this time, they intended to kill him. As it turned out, on November 10, 2021, the complainant learned that while Mustak and his friends were having biryani, two young men arrived on a bike and fired gunshots at Mustak and Mubarik. Mustak tried to escape but was shot again, causing him to collapse on the street. The attackers continued to fire at Mubarik even after he fell. Mubarik sustained a gunshot wound to his leg. His brother later arranged for Mubarik to be admitted to Escort Fortis Hospital for medical treatment. The two assailants who fired fled the crime scene in a Scorpio car. Allegedly, while fleeing, there were other individuals in another Scorpio and

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a Creta car, including Ajit Kalia, Vinod Bhiduri, Chandan, Sandeep Bainsala, Shyam Mishra (alias Mona Pandit), Bara, Puneet Pandit, Amit Bainsala, and Sumit (alias Nonu). The alleged motive for the attack is revenge stemming from past enmity. An FIR was filed, and the petitioner was arrested as a suspect on November 21, 2021, remaining in custody since then.

3. Initially, the petitioner's learned counsel points out that the petitioner's co-accused, namely, Chandan, Shyam Mishra (Mona Pandit), Sandeep Bainsla, Rajesh (Bara), and Yogesh (Yogi), were already granted bail by a co-ordinate Bench of this Court through orders dated August 31, 2022, September 20, 2022, and November 29, 2022 (Annexures P-4 to P-6 respectively), passed in CRM-M-32398-2022, CRM-M-42303-2022, and CRM-M-46447-2022, and other connected cases. Also, it's pointed out that another co-accused, Vinod Bhiduri, has been granted bail by this Court through an order dated August 18, 2023 (Annexure P-7), passed in CRM-M-30948-2023.

3.1. Learned counsel for the petitioner contends that the petitioner was not named in the FIR, and no specific allegations have been leveled against him. The petitioner had no enmity with the deceased. The petitioner has been named in the present case based on the disclosure statement of co-accused Vinod Bidhuri, who has been granted bail by this Court. The petitioner did not cause any injury to the deceased or the complainant. During the investigation, the petitioner allegedly recovered a homemade pistol, which is also claimed to be planted.

3.2. Learned counsel for the petitioner also refers to the testimonies of PW1, PW2, and PW3 (Annexures P1 to P-3, respectively) to demonstrate that all three prosecution witnesses have retracted their earlier statements given to the police and were declared hostile. He further submits that, in any case, based on the aforementioned testimonies, it is likely that the trial will result in the petitioner's acquittal, asserting that the petitioner has been falsely implicated in this case.

3.3. Learned counsel fairly submits that the petitioner is involved in three cases, of which, he has been acquitted in two and is on bail in one.

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3.4. Finally, he submits that nothing is 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.

4. 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. On a Court query, he does not controvert that role attributed to the petitioner is on similar footing as that of the other co-accused, namely Chandan, Shyam Mishra @ Monda Pandit, Sandeep Bainsla, Rajesh @ Bara @ Shivam, Yogesh @ Yogi and Vinod Bhiduri, who have been granted bail, as aforesaid.

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

6. In response to a query from the Court, under instructions from SI Ayyub Khan, learned State counsel informs that the challan has already been filed and charges were framed on May 12, 2022. Of the forty-one prosecution witnesses, only three have already been examined so far. Thus, the investigation regarding the petitioner is complete, and he is not required for custodial interrogation.

7. At this stage, the allegations against the petitioner are subject totrial. The trial's progress has been slow, and it is anticipated to take aconsiderable 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 November 21, 2021, for more than 01 year and 11 months.

8. 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.

9. Co-accused of petitioner have already been granted the concession of bail by this Court.

10. The petitioner is stated to be a 28-year-old family person having a fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

15. Pending applications, if any, shall also stand disposed of.

October 10, 2023
mahavir

Whether reportable:	Yes/No
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