

214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-61541-2023

Date of decision: 12.12.2023

PARVEJ @ FARID

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ankit Chahal, Advocate and
Mr. Rahul Singh, Advocate for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR J. (ORAL)

Prayer in the present petition is made for grant of regular bail in case FIR No.390 dated 04.11.2021 registered under Section 25 of Arms Act, 1959, Section 307 of Indian Penal Code and Section 13(1) of The Haryana Gauvansham Sanrakshan and Gausamvardhan Act, 2015 (to which Section 34 of Indian Penal Code, 1860 and Section 5, 13 and 17 of The Haryana Gauvansham Sanrakshan and Gausamvardhan Act, 2015 added later on) at Police Station Gadpuri, District Palwal, Haryana.

2. The present FIR was lodged on the allegations that on 04.11.2021, the police party headed by SI Hanish Khan received a secret information that one pick-up vehicle bearing registration No. RJ-32-GB-3810 would be coming from the side of Tatarpur to go towards Faridabad while loading in it four/five cows and Oxen for the purpose of cow slaughtering and the members of GaurakshakDal are also following this vehicle and in case, barricading is done at Tatarpur turn near Prithla accused can be apprehended. Believing the information to be reliable, barricading was done at the Tatarpur turn and after

sometime one pick-up vehicle was seen coming which was signalled to stop but the pick-up halted and on seeing the police party fired shots but somehow escaped from the bullet. The driver of the pick-up vehicle rushed the vehicle towards the barricade and attempted to escape but due to the faulty tyre of the vehicle the accused had to leave the vehicle in the fields near Jatola and by taking the advantage of darkness, they fled away. Attempt was made to chase the accused persons but they managed to escape. The vehicle was checked and it was discovered that three cows, one ox and one calf were loaded. Total five cattles and empty cartridge of .315 bore were recovered. The Bolero vehicle, cattle and the empty cartridges were taken into the possession of the police.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is neither named in the FIR nor any specific overt act or injury has been attributed to him. The petitioner has been falsely implicated in the present case on the basis of disclosure statement made by co-accused while in police custody, which is not admissible in evidence under Section 26 of Indian Evidence Act and has no value in the eyes of law. There is no other evidence which could indicate the complicity of the petitioner in the alleged crime. The investigating agency has already concluded the investigation and submitted the final report.

4. Per contra, learned State counsel opposes the grant of bail to the petitioner on the ground that his involvement in the alleged crime is clearly established and one country-made pistol has been recovered from his possession.

5. A two Judge Bench of Hon'ble Supreme Court in '**Satender Kumar Antil v. CBI**' (2022) 10 SCC 51, with respect to prevailing conditions

of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

6. Having heard learned counsel for the parties and after perusing the record with their able assistance, undisputedly, it is a case of no injury. Whether offence under Section 307 of Indian Penal Code is made out or not would be a moot point to be determined by learned trial Court. The petitioner is behind the bars since 28.10.2023 and the investigating agency has already completed investigation and submitted the final report under Section 173 of Cr.P.C. on 16.11.2023. The trial of the case has not made any progress as out of 16 prosecution witnesses cited, none has been examined so far and the trial of case would likely to take long time to conclude. The culpability of the petitioner would be seen at the time of the trial.

7. Accordingly, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of the CJM/Duty Magistrate concerned.

8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed

without being prejudiced by observations of this Court.

December 12, 2023
manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |