

CRM-M-1596-2024 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-1596-2024 (O&M)

Reserved on: 12.03.2024

Date of Pronouncement: 21.03.2024

Sunil @ Kala @ Balwant

... Petitioner(s)

Versus

State of Haryana

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Pradeep Duhan, Advocate
for the petitioner(s).

Mr. Naveen Kumar Sheoran, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
899	06.11.2021	Barwala, District Hisar	307, 201, 34, 120-B IPC and 25 of Arms Act 1959

1. The petitioner incarcerated in the FIR captioned above, has come up before this Court by filing the present **second** petition under Section 439 CrPC seeking bail.
2. In paragraph No. 7 of the status report dated 24.02.2024, the State detailed the pending cases against the petitioner which are as follows:-

Sr. No.	FIR No.	Date	Offences	Police Station
1.	40	09.02.2020	302, 307, 120-B IPC	Civil Lines, Hisar
2.	355	26.09.2020	25 of Arms Act	Civil Lines, Hisar
3.	690	03.11.2021	307, 285, 120-B, 34 IPC & 25 of Arms Act	Azad Nagar, Hisar
4.	138	17.09.2003	304-B, 34 IPC	Siwani
5.	205	04.06.2020	25 of Arms Act	Civil Lines, Hisar
6.	198	09.09.2012	302, 201 IPC	Hamirwas, District Churu (Raj.)
7.	193	21.03.2020	406, 420, 201, 34, 120-B, 506 IPC	City Karnal
8.	37	26.03.2013	352 & 353 IPC	Satnali
9.	433	16.06.2023	42 of Prison Act	Azad Nagar, Hisar

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as follows:-

"3. That the brief facts of the case are that this case has been registered on the complaint of Ram Avtar son of late Sh. Anant Ram R/o village Badhawar alleging therein that on dated 05.11.2021 at about 7.30 PM, he was present in his field situated in the boundary of village Gurana. After cultivating the field with tractor, he was coming to his village through main road. At that time 3/4 boys aged about 25 years came on a motor cycle from village Badhawar side and asked about the petrol pump. He told them that they have come on a wrong way. Thereafter one boy covered with blanket came to near to him and asked him what dispute he is having with Baljit son of Inder Singh R/o village Badhawar and he would have to face dire consequences by virtue of that dispute. On saying this, that boy took out a country made pistol from his pocket and opened fire towards his head. He was sitting at the seat of the tractor at that time. He bend himself down in order to save himself and bullet passed by touching his left forehead and he had a narrow escape. The other criminals were sitting on the motor cycle and by keeping it start. Thereafter, all the criminals fled away on the motor cycles towards village Gurana. While going they threatened that if he did not resolve the matter with Baljit, then they will kill his family. A dispute regarding plots between him and Baljit is going on and Panchayat has been convened many times in this regard. Earlier also, he had lodged a complaint against Baljit regarding threat to his life and property. Consequently, the present case FIR No. 899 dated 06.11.2021 under Sections 120-B, 201, 307, 34, 216 IPC and Section 25 of the Arms Act was registered at Police Station Barwala, District Hisar.

4. That after registration of case, a fair and impartial investigation of this case is being conducted by ASI Dharambir Singh of Special Staff Hisar. Initial investigation of this case was conducted by ASI Sukhbir Singh of PS Barwala. During course of investigation, MLR of injured Ram Avtar was obtained. As per MLR, there are two injuries on the person of Ram Avtar. Injury No. 1 is simple and injury No. 2 has been kept under observation, blunt if any. The spot inspection was conducted by SHO PS Barwala and also Scene crime team. However, nothing was recovered from there. Copy of MLR of injured Ramavtar is annexed as Annexure R-1.

5. That co-accused Mukesh, Kuldeep and Sagar have been arrested in case FIR No. 127 dated 08.11.2021 under sections 398 and 401 of IPC and Arms Act PS Sidhmukh, Rajasthan. During investigation, they suffered their statement regarding the commission of offence in case FIR No. 690 dated 03.11.2021 under section 307 of IPC PS Azad Nagar Hisar. That the investigation of this case was transferred to Special Staff Hisar for further investigation of the case. Accused Mukesh, Kuldeep and Sagar were taken on production warrant on dated 06.12.2021 and joined into the investigation in the present case and resultantly arrested in this case on dated 06.12.2021. During course of investigation, their disclosure statements have been recorded. Co-accused Mukesh stated that in January 2017, when he was lodged in Hisar jail, he met Sajjan alias Kala, resident of Balsamand village, Hisar and he released from jail in December 2017. After this, he kept talking to Sajjan alias Kala and he included him in his gang and then assigned him the task of killing Sujindra Malik, Ramavatar and Sonu. For this, Sajjan alias Kala

provided him weapons and said that he had talked to Kuldeep alias Budhiya and Sagar and together with them he had to carry out these attacks. After this, he talked to co-accused Kuldeep and Sagar and then on the night of 2.11.2021, along with petitioner/accused Sandeep alias Rangi, co-accused Baljeet, Surendra, Narendra alias Bachchi, they reccy in village Badhawar to kill Ramavatar and Sonu, but both were not visible there. On dated 03.11.2021, he (co-accused Mukesh), co-accused Kuldeep and Sagar together shot Sujindra Malik in Azad Nagar and then all three came to co-accused Baljeet, Surendra, Narendra alias Bachi and Pradeep Poonia. After this, Baljeet, along with Surendra, Sandeep alias Rangi and Narendra alias Bachi, conducted reccy for Ramavatar and Sonu. On dated 05.11.2021, he (co-accused Mukesh), Kuldeep alias Budhiya, Sagar and Sandeep alias Rangi stood on Data to Badhawar road in village Badhawar and Baljeet, Surendra and Narendra alias Bachi did a reccy of Ramavatar and told them that he was about to come from the fields. When Ramavatar arrived, Sandeep alias Rangi identified him and then Kuldeep shot him with a pistol and when Ramavatar raised an alarm, they ran away. Copies of disclosure statements of co-accused Mukesh, Kuldeep and Sagar are annexed as Annexure R-2 to R-4.

6. That Co-accused Kuldeep in his statement suffered that co-accused Narender @ Bacchi was involved in hatching conspiracy of attempt to murder of Ram Avtar and also conducted reccy of complainant Ramavtar. He (co-accused Kuldeep), co-accused Sandeep @ Rangi, Mukesh, Sagar and had gone on motor cycle. He was having an illegal pistol from which he fired upon complainant Ramavtar who luckily saved. Thereafter they fled away from the spot. He further stated that the weapon of offence is a pistol used by him in committing crime which has been recovered in case FIR No. 127 dated 08.11.2021 under section 398, 401 IPC and 25 of Arms Act PS Sidhmukh, district Churu (Rajasthan). Motor cycle used in the crime has been recovered from co-accused Kuldeep in case FIR No. 690 dated 3.11.2021 under section 307 IPC & A. Act PS Azad Nagar, Hisar. One empty cartridge was also recovered from the possession of co-accused Kuleep in the present case. Weapon of offence is still to be transferred from case FIR No. 127/2021 PS Sidhmukh, District Churu, Rajasthan in the present case. Co-accused Sajjan @ Kala and Sandeep @ Rangi have also been taken on production warrant and joined in the investigation of present case on dated 24.12.2021 and arrested and disclosure statement was recorded in which he admitted his crime. Co-accused Pardeep and Rohit were arrested in this case on dated 23.12.2021. Co-accused Vinod @ Kana and petitioner/accused Sunil @ Kala were arrested on dated 09.03.2022. Co-accused Surender was arrested on dated 24.03.2022. Nothing was recovered from them."

4. Petitioner's counsel submits that the petitioner was not named in the FIR, he was not present at the spot and even no recovery has been effected from him. It is further submitted that the complainant has been examined and he had not supported the prosecution case. Evidence against the petitioner is based on disclosure statement of co-accused, role attributed to the petitioner is of planning (criminal conspiracy) and except disclosure statement of co-accused, no other evidence is available against the

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petitioner. Counsel further submits that no firearms injury has been attributed to the petitioner and his custody is more than 02 years and even 07 witnesses have already been examined out of 26 and the petitioner is suffering from various medical ailments. Petitioner's counsel prays for bail by imposing any stringent conditions. He also seeks bail on the grounds that despite the direction of this court to expedite the trial and the same is hanging fire till date. Petitioner's custody cannot be indefinite for uncertain reason. The petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

5. State opposes the bail on the grounds that offence of 307 IPC prescribes life imprisonment. He further contends that given the criminal past, the accused is likely to indulge in crime once released on bail.

6. An analysis of the above argument point out that petitioner intended along with members of his gang had fired upon the complainant, which whiskered past his forehead and it was his good luck that victim survived otherwise he would have received a shot in the forehead and injury in skull would have dangerous consequences.

7. In Paramjeet Singh v. State of Punjab, CRM-M 50243 of 2021, this court observed,

While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles.

8. The petitioner along with his two/three gang members fired upon the complainant, which whiskered past his forehead. The petitioner has a criminal history of heinous and grave crimes. The petition does not refer to any averment based on which this court is assured that if this recidivist is released on bail, then he shall not indulge in criminal behavior.

9. A perusal of the bail petition and the documents attached, *prima facie* points towards the petitioner's involvement and does not make out a case for bail and he is neither entitled to bail on merits nor on the grounds of prolonged pre-trial incarceration. Any further discussions are likely to prejudice the petitioner; this court

refrains from doing so.

10. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

11. The petition is dismissed. All pending applications, if any, stand closed. However, considering the petitioner's right to speedy trial coupled with the pre-trial incarceration, it is clarified that if the trial is not concluded within six months, and if the delay is not attributable to the petitioner, then the petitioner may file an application for bail before the trial court, which shall decide it expeditiously and consider the bail on the grounds of pre-trial custody, and all the previous orders of dismissal passed by the trial court or High Court shall not come in the way. It is clarified that this relaxation is subject to the condition that neither the petitioner shall seek any adjournment nor try to use any tactics to delay the trial, and if they do so, this order shall stand recalled and automatically revoke by resorting to Section 362, read with Section 482 Code of Criminal Procedure, 1973, without any further reference to this court.

(ANOOP CHITKARA)
JUDGE

21.03.2024
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Whether speaking/reasoned	:	Yes
Whether reportable	:	No