



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

**CRM-M-4525-2024
Reserved on: 14.05.2024
Pronounced on: 18.05.2024**

Sajid @ Boda

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Anmol Partap Singh Mann, Advocate
for the petitioner.

Mr. Deepak Bhardwaj, DAG., Haryana

VIKRAM AGGARWAL, J.

1. This is the second petition preferred under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for the grant of regular bail in case FIR No.583 dated 03.11.2022, registered under Sections 148, 149, 323, 325, 307, 302, 506 IPC and Section 25 of Arms Act 1959, at Police Station, Sadar Nuh, District Nuh, Haryana. The first bail application was dismissed by this Court on 29.04.2023.

2. On a complaint submitted by one Tahir S/o Sahid, the present FIR was registered. As per the complainant, the notification regarding election for the post of Sarpanch in their Village Meoli, Police Station Nuh, District Nuh, was issued on 7-8 October, 2022 and his uncle Wahid S/o Badlu was a candidate. One Sakir S/o Jabbar was the candidate of the opposite party and the Government Secondary School, Meoli was chosen to

be the booth for the casting of votes. It was stated by Sakir S/o Jabbar and



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his family members that the booth was near to their house and that Wahid's voters will not be permitted to vote and that they would capture the booths and if any one tried to stop them from capturing the booth, they would even resort to shooting. An application was also given to the police regarding this by the complainant side. The elections were scheduled for 02.11.2022 and the same started at 7.00 A.M. Around 11.30 A.M., 93 persons (as named in the FIR) were sitting ready, having guns, country made pistols and sticks in their hands. At that time, Tahir S/o Saheed came to cast his vote. The moment he reached the school, the above said people threatened him and asked him not to cast his vote. Tahir was slapped on the face by Abdulla S/o Mohdi. An altercation ensued and then firing took place, the details of which were given in the FIR. Many persons got injured and were taken to hospital from where some persons were referred to higher centers. One person is stated to have expired and many are stated to have been injured. The present petitioner was named by one Mois in a statement given by him on 09.11.2022, wherein it was stated that the present petitioner fired at him, as a result of which he suffered a pellet injury on his chest.

3. I have heard learned counsel for the parties. During the course of hearing, in compliance with the order dated 01.05.2024 passed by this Court, the State of Punjab filed status report by way of affidavit of the Superintendent of Police, Nuh along with custody certificate and other documents.

4. Learned counsel for the petitioner submitted that the petitioner has been falsely implicated. It was contended that the statement of the injured Mois, on the basis of which, the petitioner was arrayed as an accused

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was recorded under Section 161 Cr.P.C. on 09.11.2022 i.e. almost one week after the alleged incident. It was submitted that earlier when the FIR was registered, no overt act was attributed to the petitioner and further, even in pursuance to the statement made by Mois on the basis of which the petitioner was arrested, no recovery was made. Learned counsel submitted that the petitioner is in custody since 13.11.2022; final report under Section 173 Cr.P.C. was submitted long back; charges were framed as far back as on 30.05.2023 and were reframed in August 2023 after filing of supplementary challan; the trial is proceeding at an extremely slow pace and no prosecution witness has been examined till now. Learned counsel submitted that this itself is a change in circumstances entitling the petitioner to file and maintain this second application for the grant of bail. Learned counsel submitted that under the circumstances, the petitioner deserves to be released on bail.

5. Per contra, learned counsel for the State opposed the bail application stating that the allegations against the petitioner are very serious and in case he is released on bail, he may try to influence and threaten the witnesses and may also abscond. It was submitted that even the main accused who is alleged to have committed the murder of Mahmud has not yet been arrested and, therefore, the release of the present petitioner on bail is not called for.

6. I have considered the submissions made by learned counsel for the parties.

7. The FIR was registered on 03.11.2022. At that time, though the petitioner was named in the FIR, it was not alleged that he had fired some shot etc., on someone. In-fact, specific roles had been attributed to few other



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co-accused viz Wakeel, Abdul Hai, Tayyab, Yunus, Yakub etc. Mahmud, who expired in the incident, was stated to have been shot by one Yakub. Some other people were also named and one Sajid son of Harun was also stated to be holding a gun in his hand. The statement of one of the injured Mois was recorded on 09.11.2022 i.e., about one week after the incident in which he named the petitioner and stated that the petitioner had shot at him with a gun and its pellets had hit Mois on his chest. Whether the petitioner had actually shot at Mois would be determined during the trial. The fact remains that almost after more than one year of charges having been framed, the trial is virtually at the same stage and has not progressed. The status report filed by the State refers to about the trial as under:-

“8. That after completion of investigation of the case, a challan u/s 173 (2) Cr.P.C. was prepared on 27.01.2023 against accused Nijamu & Sajid @ Boda (petitioner), which was submitted in the Ld. Court of Illaqua Magistrate on 07.02.2023 for further legal proceedings in the matter. The charges against accused Nijamu & Sajid @ Boda were framed on 30.05.2023. A copy of order dated 30.05.2023 for farming charge by the Ld. Trial Court, which is annexed as Annexure R-1. Thereafter, summons for six PWs issued for 19.08.2023 and same were received back as served in the Ld. Court. Thereafter, a supplementary challan prepared against accused Sakir was submitted on 25.04.2023 in the Ld. Court of Illaqua Magistrate. However, due to submission supplementary challan against accused Sakir which was committed in Ld. Session Court, the charges were again framed on 19.08.2023 against accused 1. Nijamu, 2. Sajid @ Boda and 3. Sakir and case was adjourned for 07.10.2023 and evidence of PWs could not done as PWs did not present. The



copies of order dated 19.08.2023 and 07.10.2023 are annexed as Annexure R-2 & 3. Thereafter, bail-able- warrants for six PWs were issued for 07.11.2023. But in between the case file was transferred from the Ld. Court of Sh. Sandeep Kumar, Duggal, Additional Session Judge, Nuh to Sh. Ajay Kumar Verma, Additional Session Judge, Nuh on 26.10.2023 and date fixed for 07.11.2023. On 07.11.2023 no PWs examined due to non-functioning of the Court as concerned Judicial Officer was on leave from 04.11.2023 to 10.11.2023. However, case file was taken up on 03.11.2023 and fixed it for 27.02.2024 for the purpose of PWs. A copy of said order dated 03.11.2023 is attached as Annexure R-4.

9. It is pertinent to mention here that the case file was again transferred from the Court of Sh. Ajay Kumar Verma, Additional Session Judge, Nuh to Ld. Court of Sh. Sandeep Kumar, Duggal, Additional Session Judge, Nuh on 23.11.2023 as the case was fixed for 27.02.2024 but no PWs appeared in the trial Court on that day. Thereafter, on 27.02.2024, Hon'ble trial Court issued Bail- able-warrant against Tahir complainant/star witness only for 16.04.2024, same was returned as served, but he did not appear before the trial Court on 16.04.2024. Thereafter again Bail-able-warrant issued against the complainant/star witness only for 14.05.2024. A copy of said order dated 03.11.2024 is attached as Annexure R-5. There are 89 (eighty nine) witnesses from which, private witnesses 37 (32 injured and 5 eye witnesses), Medical Officers 21, Police officials 24 and other are 7 and none of the prosecution witness has been examined as yet.”

A perusal of the aforesaid shows that out of 89 witnesses, not even a single witness has been examined. In the considered opinion of this Court, merely because independent witnesses are yet to be examined and that the main accused is yet to be arrested would not be a ground any longer



to keep the petitioner in custody, keeping in view the fact that the petitioner has been suffering incarceration for the last 18 months. The proceedings do not show any attempt on behalf of the petitioner to delay the trial.

8. As per the custody certificate, the petitioner is in custody from the last 1.5 Years (18 months). No recovery was made from him and no further recoveries are to be made. Final report under Section 173 Cr.P.C., has already been submitted. Trial has not proceeded at a pace at which it should have. It will therefore, take a sufficiently long time to conclude the trial. Under the circumstances, no useful purpose would be served by keeping the petitioner in custody any longer.

In view of the above, without commenting on the merits of the case, the present petition is allowed. The petitioner is ordered to be released on regular bail to the satisfaction of concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: 18.05.2024
Rekha

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No