



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

219

CRM-M-28662-2023

Date of decision: 22.10.2024

NIWAS ALIAS SONU

...Petitioner

V/s

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Amit Choudhary, Advocate, for the petitioner.

Mr.Gagandeep Singh Chhina, AAG, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is seeking the concession of bail under Section 439 of the Cr.P.C. in case FIR No.166 dated 10.08.2022 under Sections 307, 34 of the IPC, 1860 and Section 25 of the Arms Act, 1959 registered at Police Station Bhattu Kalan, District Fatehabad.
2. Learned counsel for the petitioner submits that the petitioner has been in custody since 10.08.2022 for allegedly inflicting a knife blow in the abdomen of the complainant on 09.08.2022. It has been argued by the learned counsel that a false and exaggerated version having been brought forth in the FIR in question is evident from the fact that during investigation, the investigating agency had found most of the allegations levelled in the FIR to be false. Furthermore, an application under Section 319 of the Cr.P.C. was also moved for summoning the brother of the petitioner, namely, Bhairav, however, the said application was dismissed



by the trial Court. Learned counsel has further submitted that the falsity of the version coined by the complainant party is further evident from the fact that as per the allegations, all the accused including the petitioner inflicted number of injuries on the person of the complainant, however, as per the MLR of the complainant, there was only a single injury sustained by him; no other injury was found on the person of the complainant. It has still further been argued by the learned counsel that the trial has come to a virtual standstill on account of the repeated non-appearances of the prosecution witnesses despite the issuance ofailable warrants to secure their presence before the trial Court. In support, learned counsel has placed on record the zimni orders of the trial Court. It has further been submitted that the complainant party has been for reasons but obvious intentionally absenting themselves before the trial Court after the complainant was partly examined on 26.04.2023. Prayer has, therefore, been made that in view of the long incarceration of the petitioner coupled with the fact that 07 prosecution witnesses still remain to be examined, further incarceration of the petitioner would serve no useful purpose moreso, when he has no previous criminal antecedents. Learned counsel submits that the petitioner may be put to any stringent conditions while being enlarged on bail.

3. *Per contra*, learned State counsel, while opposing the prayer and submissions made by learned counsel for the petitioner, on instructions, has not disputed the custody period of the petitioner as well as the stage of trial. It has also not been disputed that after the complainant



was partly examined on 26.04.2023, the case was being adjourned continuously on account of non-appearances of the prosecution witnesses.

On a pointed query, the learned State counsel, on instructions, has also not disputed that no other injuries were found on the person of the complainant except for one knife blow which has been attributed to the petitioner on the abdomen of the complainant. On a further query, learned State counsel has also not disputed that the petitioner has no previous criminal antecedents. However, learned State counsel has drawn the attention of this Court to the allegations levelled in the FIR in question, which sands reproduced herein-under:

“Statement of Mahender Singh son of Partap Singh son of Raldu Ram Dabla, resident of Banawali and aged about 34 years mobile No.90173-44404. Stated that I am resident of abovesaid address and I am 10th class passed. I am having a Transport in Hyderabad. I am a married man. I have a daughter. I on dated 24.07.2022 came to village Banawali from Hyderabad. Today dated 09.08.2022 at about 7:30/8:00 p.m. I was going to my house from my plot and when I reached in front of Panchayat Bhawan Banawali, then from my back side white colour came whose number I could not pen down. And from which Niwas and Bhairav sons of Nathu Ram residents of Dhabi Kalan and two other unknown persons alighted. That Bhairav have pointed a pistol towards me and I gave a leg blow on the hand of Bhairav and the pistol was fallen from the hands of Bhairav. I again ran towards the plot then Niwas gave a knife blow on me with intention to kill me which he was carrying in his hands which hit on the right side of my abdomen. In the meantime my brother Sunil came. That two unknown boys gave fist blow to me whom I can recognized them if they came in front. That after making my noiseboys rushed to me who was playing in this school and while seeing them coming Bhairav and Niwas alongwith two unknown boys ran away from the spot from the car alongwith their



respective weapons and while they going and said that today you spared and in future we will kill you. The grudge is that the sister of Niwas who was studying in Jind is residing with me in live-in-relationship and due to this grudge they have given me the injuries. My brother Sunil Kumar after arranging the vehicle got admitted me in Sadhbawna Hospital for treatment where my treatment is going on. That the strict legal action be taken against Niwas, Bhairav and two other unknown persons. I have got recorded my statement read which is correct. Sd/-."

4. I have heard learned counsel for the parties and perused the material placed on record including the allegations levelled in the FIR in question.

5. The petitioner has been in custody since 10.08.2022; challan was presented on 01.11.2022 followed by framing of charges on 16.02.2023. However, the trial has not made much headway till date primarily on account of an application having been moved under Section 319 of the Cr.P.C. for summoning of the brother of the petitioner as an additional accused which was subsequently dismissed. In addition, a perusal of the zimni orders also reveals that the prosecution witnesses have been irregular in appearing before the trial Court for getting their evidence recorded.

6. In the facts and circumstances as enumerated hereinabove, this Court deems it fit to extend the concession of bail to the petitioner.

7. Accordingly, the instant petition is allowed and the petitioner be admitted to bail on his furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned. However, it is made clear that

anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

8. However it is clarified that in case the petitioner misuses the concession of bail granted to him, the State would be at liberty to seek cancellation of the same.

(MANJARI NEHRU KAUL)
JUDGE

October 22, 2024
poonam

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