

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36491-2023
Reserved on: 06.08.2024
Pronounced on: 30.08. 2024

Shiva ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rohit Kataria, Advocate for
Mr. Manu K. Bhandari, Advocate
for the petitioner.

Mr. Aashish Bishnoi, D.A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
335	26.08.2022	Arya Nagar, District Rohtak	323, 324, 34, 506 IPC and 307 IPC (added later on)

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973, seeking regular bail.
2. In paragraph 20 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:-

“2. That the facts of the case are that the above- said case was registered on the statement of complainant Akunsh son of Shri Sanjay R/o Quilla Mohalla Rohtak. In his statement the complainant disclosed that he is working as labourer. On 25/8/2022 at around 09.30 PM, the complainant was standing at the gate of HUDA Complex after taking food and at the same time (1).Shiva son Vijay (2). Vijay and (3) nephew of Vijay namely Aman (4) Arjun Chhotu and Tota (Saurabh) friend of Shiva came there and started talking with me and after alluring me had taken me behind HUDA Complex Park under a Banyan Tree. At that time complainant received phone call from his mother who asked the complainant to get return at home and when the complainant was going from there, then Tota (Saurabh) gave a knife blow from back side to

complainant. Thereafter Aman and Shiva gave knife blow to complainant with intention to kill him. The complainant got rescued himself from clutches of accused and fled away towards his house and his family members got admitted him in the hospital. On the basis of Baid complaint a case vide FIR No.335 dated 26/8/2022 U/s 323, 324, 506, 34 IPC was registered at P.S.-Arya Nagar, Rohtak."

4. The petitioner's counsel prays that the petitioner was admitted to bail on 05.09.2022 by the Ld. Trial Court and after addition of section 307, the petitioner in order to show bonafide and keeping faith in law, surrendered before the Ld. Trial Court on 18.01.2023 and is in custody since then. It is however important to mention here that the petitioner during his bail period, the petitioner did not misused the concession granted by the Ld. Trial Court in any manner. it is further important to point out here that admittedly alleged recovery of bod kin(sua) has been affected from the petitioner whereas the FIR only talks about the knife stab (sharp injuries) at the person of the complainant. Therefore no offence is made out against the petitioner in the present case.

5. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

6. The State's counsel opposes bail and refers to the reply.

7. It would be appropriate to refer to the following portions of the reply, which read as follows:-

"7. That the treatment record and BHT report of complainant received was from hospital on 22/12/2022 and thereafter doctor's opinion was obtained. As per doctor's opinion injury No.1, 2, 5 were opined as "dangerous to life in nature and injury No.3 & 4 were opined as simple in nature". The copy of MLR and doctor's opinion are attached herewith as Annexure-R1 & 82. On the basis of doctor's opinion Section 307 IPC was added in this case."

5. *That in reply to the contents of para No.5 of the petition it is submitted that earlier the petitioner was granted bail U/s 323, 324, 34, 506 IPC vide order dated 5/9/2022 by .M.I.C., Rohtak, but after adding of Section 307 IPC, on 3/1/2023 an application for cancellation of bail of all the accused has been moved and same has been allowed vide order dated 4/1/2023 by Ld.J.M.I.C., Rohtak.*

9. *That in reply to the contents of para No.9 of the petition it is submitted that the petitioner has been specifically named by the injured/complainant stubbing and specific injury of has been attributed petitioner. As far to the as the contention with regard to doctor is concerned. It is not relevant in the present case, though it is admitted that the doctor has been arrested in another case vide FIR no.1 dated 6/1/2023 P.S.-Vigilance Rohtak.”*

8. The petitioner was earlier on bail, which he did not misuse.
9. There is sufficient prima facie evidence connecting the petitioner with the alleged crime. However, per paragraph 19 of the bail petition, the petitioner has been in custody since 18-01-2023. Per the custody certificate dated 05 Aug 2024, the petitioner’s total custody in this FIR is 1 year 6 months and 22 days. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.
10. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.
11. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.
12. While furnishing a personal bond, the petitioner shall mention the following personal identification details:
- | | | |
|----|--|--|
| 1. | AADHAR number | |
| 2. | Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk. | |
| 3. | Mobile number (If available) | |
| 4. | E-Mail id (If available) | |
13. This order is subject to the petitioner’s complying with the following terms.
14. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any

witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

15. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall not enter the property, workplace, and residence of the victim until the statements of all non-official and informal witnesses in the trial are recorded. This Court is imposing this condition to rule out any attempt by the accused to incapacitate, influence, or cause any discomfort to the victim. Reference be made to *Vikram Singh v Central Bureau of Investigation*, 2018 All SCR (CrL.) 458; and *Aparna Bhatt v. The State of Madhya Pradesh*, 2021:INSC:192, 2021 SCC Online SC 230.

16. Given the background of allegations against the petitioner, it becomes paramount to protect the victim, and their family members, as well as the members of society, and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days from release from prison and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

17. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense. In *Mohammed Zubair v. State of NCT of Delhi*, 2022:INSC:735 [Para 28], Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts, while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

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

19. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

20. Petition allowed in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

30.08.2024
Jyoti Sharma

Whether speaking/reasoned : Yes
Whether reportable : No.