

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

203-CRM-M-44697-2024

Date of decision: 26.09.2024

Rachit

... Petitioner

VS.

State of Haryana

... Respondent

CORAM: HON’BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Vishal Garg Narwana, Advocate,
Mr. Arishdeep Mraad, Advocate and
Mr. Khushwant Saharan, Advocate
for the petitioner
Mr. BS Virk, Sr.DAG Haryana

Sandeep Moudgil, J.
Relief sought

The petitioner has filed the present petition under Section 483 BNSS seeking grant of regular bail in case FIR No.357 dated 21.05.2023 under Sections 307/323/34 IPC and Section 25(1-B)(a) of Arms Act (Section 325 IPC added later on), registered at Police Station Chandnibagh, District Panipat.

Facts

Prosecution story set up in the present case as per the version of the version is as under:-

“Copy of the writing is as follows that statement of Ajay son of Gulzari resident of Azad Nagar, Shiv Chowk, Panipat, Mobile No. 9671817247, 7206564151. Stated that I am resident of above mentioned address and do the work of labour in the factory. Yesterday on 20.05.2023, at about 09.30 pm, myself and my friend Sumit son of Pyare Lal resident of Kishanpura, Panipat, had gone to our friend in the colony constructed near Krishna Garden. Name of my friend residing in Krishna Colony is Mangal. We had some minor altercation on some matter with Rachit son of Chandervir resident of Bijnore, residing in that colony. Who in order to take revenge of this altercation hit empty beer bottle in the head of my friend Sumit and fired on us with the country made pistol in his hand, the

bullet hit above my left thigh and passed through it and on the left side of my chest and the particles to the gun powder on the stomach. I saved my life by running away. Rachit with an intention to kill fired upon me and while running also fired in the street. One accomplice was also with Rachit, whose name address I do not know. We also fully cooperated with Rachit. Legal action be taken against both of them. Got written the statement, read it, it is correct. Sd/- Ajay Phone..”

Submissions by petitioner counsel

Learned counsel for the petitioner argued that the PW3 Ajay complainant and PW4 Sumit eye witness have been examined and they have not supported the prosecution case and as such, there is no material with the Court to hold that the petitioner was guilty of the alleged offence. He further averred that the petitioner himself surrendered before the JMIC, Bijnor Uttar Pradesh on 26.05.2023 which shows his bona fide and proves that the instant FIR has been lodged due to some misunderstanding with the complainant.

State's Contention

Learned State counsel has filed custody certificate dated 25.09.2024 which is taken on record and as per which, the petitioner has undergone total sentence of 1 year 3 months and 26 days, pending trial. Besides, there is no criminal case pending against the petitioner. He, however, is not in a position to contradict the fact that the prime witnesses i.e. the complainant and PW4 have since turned hostile.

Analysis

Heard learned counsel for the parties and gone through the record. A Division Bench of this High Court in ***Rajender Singh vs. State of Haryana, 2022(2) R.C.R. (Criminal) 85*** has held that a right under Article 21 of the Constitution of India includes right to speedy trial and expeditious disposal

which is also in public interest primarily showing concern on a following view point.

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

That apart, challan in the present case has been filed on 23.08.2023; investigation is complete and charges have been framed on 03.11.2023 and out of 19 PWs, only 2 PWs have been examined and for that reason the petitioner cannot be put behind the bars for an indefinite period particularly in the light of the fact that there is no recovery effected by the police from the person of the petitioner. Pertinently, this Court cannot be oblivious of the fact that PW3 Ajay complainant and PW4 Sumit eye witness have been examined and they have not supported the prosecution case while appearing before the trial court.

Taking into consideration the totality of the circumstances particularly the fact that trial in the present case is moving at a snail's pace inasmuch as out of total 19 PWs, only 2 PWs have been examined so far and particularly in view of the fact that since the prime witnesses i.e. the complainant and the eye witness themselves have turned hostile leaving a very meager chance of conviction of the petitioner. However, in that eventuality, it is abundantly clear that it will take certainly long time to conclude the trial and detaining the petitioner behind the bars for an indefinite period would amount to violation of Article 21 of the Constitution of India and is against the principle "Bail is a rule,

jail is an exception” as elucidated in the judgement of Apex Court in “*Dataram Singh vs. State of Uttar Pradesh and another;*, (2018) 3 SCC 22”.

Decision

Accordingly, the present petition is allowed and the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

It is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

26.09.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No