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

CRM-M-45314-2024 (O&M)

Date of decision: 30.09.2024

Akash @ Aakash

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Balvinder Sangwan, Advocate and
Mr. Savreet Singh Brar, Advocate for the petitioner.

Mr. Jagdish Manchanda, Addl. A.G. Haryana.

VIKAS BAHL, J. (ORAL)

1. This is the third petition filed for grant of regular bail to the petitioner in FIR No.514 dated 16.07.2018 registered under Sections 307 and 34 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959 (Section 452 of IPC has been added later on) at Police Station Sadar Palwal.

2. Learned counsel for the petitioner has submitted that the petitioner has been in custody since 09.02.2021 and even earlier also, he was in custody from 30.08.2018 to 01.12.2018 and thus, total custody of the petitioner is more than 3 years, 10 months and 19 days. It is further submitted that although, two witnesses remain to be examined which includes the Investigating Officer namely ASI Satvir Singh but has submitted that the said Investigating Officer namely ASI Satvir Singh has been summoned since



17.08.2023 and even non-bailable warrants have been issued against him but yet he has not appeared before the Court. It is submitted that the petitioner is not involved in any other case and only on the ground of custody, he deserves to be granted regular bail. It is further submitted that the last bail application of the petitioner was withdrawn on 30.11.2022 and even thereafter, sufficient time has elapsed but yet the trial has not been concluded. In support of his arguments, learned counsel for the petitioner has relied upon the judgment of Hon'ble the Supreme Court in the case titled as **Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another** reported as **2024(3) RCR(Criminal) 494** to state that right to a speedy trial of offenders facing criminal charges is implicit in the broad scope and contents of Article 21 and thus, keeping the petitioner in further incarceration would be violative of his right under Article 21 of the Constitution of India. It is further submitted that as per the FIR, one injury has been caused to the injured in the incident in question and from the FIR, it is not clear as to who out of the two accused i.e. the present petitioner namely Akash son of Daya Ram or Akash son of Ved Prakash (wrongly mentioned as Dev Raj in the FIR) had shot the injured who had suffered one injury. It is further submitted that primary witness in the present case was injured-Balraj @ Ballan who has subsequently died in another incident in which the petitioner is not involved and thus, the petitioner has arguable points in the main case as well.

3. On the other hand, learned State Counsel has submitted that although in the FIR, the aspect as to who shot the said Balraj is not clear but during the course of investigation, it has been found that it is the present petitioner who had shot the injured-Balraj. It is further submitted that only two witnesses are left to be examined and the State is trying its level best to get the



ASI examined and in the said regard, has filed an affidavit dated 29.09.2024 of Narender Singh, Deputy Superintendent of Police, Crime against Women, Palwal today in the Court which is taken on record and has referred to the same in order to state that on account of absence and non-cooperation by the Investigating Officer, the State has suspended him and is proceeding against him departmentally. The other facts however, have not been disputed.

4. This Court has heard learned counsel for the parties and has perused the paper book.

5. The total custody of the petitioner as on date is more than 3 years, 10 months and 19 days and yet the trial has not been completed. The petitioner is stated to be not involved in any other case. Investigating Officer in the present case i.e. ASI Satvir Singh has not been examined in spite of the fact that he has been summoned by the trial Court by issuing bailable and non-bailable warrants. A perusal of para No.2 of the abovesaid affidavit dated 29.09.2024 filed by the State specifically records the fact that two bailable warrants and six non-bailable warrants have been issued to the said ASI to appear and the said ASI who is the Investigating Officer in the present case has become absent from his duty without informing and accordingly, has been suspended and departmental inquiry has also been initiated against him. Para No.2 of the said affidavit is reproduced hereinbelow:-

“2. That on receiving the order dated 17.09.2024 passed by the Hon'ble Punjab and Haryana High Court at Chandigarh, the deponent got enquired into the matter and found that Ld. Trial court has issued 08 summons, 2 bailable warrant and 6 Non-Bailable warrants of the IO and then Show cause notice dated 24.09.2024 has been issued to him and directed him to reply with in one day, but instead of giving reply, he became absent from his



duty without information, hence his suspension and departmental inquiry has been recommended to competent authority by the under signed vide letter no.625-5A dated 26.09.2024. On the basis of recommendation he has been suspended vide order No-20010-15 Dated 29.09.2024 Ld. Superintendent of Police, Palwal The letter is annexed herewith as Annexure R-1.”

6. It is thus, apparent that the trial is not likely to end in the near future and at any rate, keeping in view the custody of the petitioner and also the law laid down in the case of **Javed Gulam Nabi Shaikh** (Supra), keeping the petitioner in further incarceration would be violative of his right under Article 21 of the Constitution of India.

7. Accordingly, the present petition for regular bail is allowed and the petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to him not being required in any other case.

8. However, it is made clear that in case, any act is done by the petitioner to threaten any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

9. Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

10. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

30.09.2024

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No