

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45407-2024
Reserved on: 05.11.2024
Pronounced on: 14.11.2024

Prashant Mishra ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Pardeep Panwar, Advocate
for the petitioner.

Mr. Viney Phogat, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
158	04.03.2023	City Ballabgarh, Faridabad	323/324/307/302/34/120-B IPC, 1860 and 25 of the Arms Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, seeking regular bail.
2. In paragraph 19 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the status report filed by the State, which reads as follows:

“2. That brief facts of the case are that on 04.03.2023, complainant Raju @ Ritik moved a complaint to the police alleging therein that on 03.03.2023 at about 9.30 p.m., he alongwith his father Subhash was going to Ballabgarh on his motorcycle to purchase some household articles. When they reached near the sweet shop of Mote Lala adjacent Hitachi ATM, they found that one Prashant resident of their colony alongwith three-four other boys were causing injuries to Vaibhav and Raja with bricks and stones and when complainant and his father tried to rescue them, Prashant instigated two boys by calling their names as Naresh and Daulat and one another to kill Subhash (father of complainant), who was trying to rescue Raja and Vaibhav. On hearing this, all the said boys took out their respective knives and inflicted grievous injuries to his father Subhash as well as Raja and Vaibhav. On hearing the noise, a crowd gathered there and rescued them. The assailants fled away from the spot raising threats to kill them. His father Subhash later on succumbed to grievous injuries suffered in the quarrel whereas Raja and Vaibhav were under treatment at Safdarjung hospital,

Delhi. The complainant sought legal action against the accused persons. On these allegations, present FIR No. 158 dated 04.03.2023, under Sections 323, 324, 307, 302, 34 of IPC & 25/54/59 of Arms Act, was registered at Police Station Ballabgarh City, District Faridabad.”

4. 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 his family.

5. The State's counsel opposes bail and refers to the status report.

6. It would be appropriate to extract relevant portion of the statement of PW-1 Sanju, the son of the deceased, filed in CRM-M-45534-2024 titled Lokesh v. State, as Annexure P-1, which read as follows:

“Stated that I am resident of aforesaid address. I am working na private company. On 03.03.2023 at around 9:30 PM, I alongwith my Lather Subhash were going to Ballabgarh on a motorcycle and in the way our motorcycle hit to a rickshaw loaded with iron patties and said iron patties struck in the stomach and chest of my father Subhash. At that same time, two other persons, who names lateron came to know as Raja and Vaibhav, have also sustained injuries in the said accident with iron patties and rickshaw. Thereafter the rickshaw was fled from there and there was the sign or number on the said rickshaw.”

7. It would be appropriate to refer to the following portions of the status report, which reads as follows:-

“20. That though complainant Sanju @ Ritik and two other material witness Raja and Vaibhav (injured) have been turned hostile. There is sufficient evidence available on record to connect the petitioner/accused with the crime. There are total 29 prosecution witnesses, 4 witnesses have been examined and 25 witnesses are yet to be examined and the Ld. Court can take a view whether to convict the accused or not based on the other evidence to be given by other witnesses during trial. Police officials and other material witnesses are yet to be examined. It is pertinent to mention here that hostility of the witnesses cannot be a new ground for granting bail to accused. If any opinion is taken on the basis of the evidence given by the hostile witnesses, it amounts to evaluating the evidence at this stage, which is impermissible while deciding the bail application under Section 439 Cr.P.C. It is a well settled principal that Court can record conviction based on the evidence of the Investigating Officer also.

21. That the role of the petitioner/accused is that present petitioner is actively involved in this case and has committed a serious offence of murder of Subhash. There is specific allegation against the petitioner/accused that in the scuffle, he alongwith co-accused inflicted grievous knife injuries to the deceased and said injuries coupled with other injuries later on resulted in death of an innocent person. The recovery of knife from the possession of petitioner/accused strengthens the factum of his direct involvement in the present heinous crime. Even in the

postmortem report, the cause of death has been opined as "hemorrhagic shock as a result of multiple antemortem stab injuries sustained over face and abdomen of which injury no.3 and 9 are sufficient to cause death in ordinary course of nature."

8. The victim's son did not support the prosecution's case and took a summersault.

9. Pre-trial incarceration should not be a replica of post-conviction sentencing. Given the stand of the victim's son, a similar co-accused being released on bail on the same reasoning, vide order dated 06-08-2024 passed in CRM-M-36714-2024 Naresh v. State of Haryana, and the other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage.

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 make 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 background of allegations against the Petitioner, it becomes paramount to protect the victim's 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.

16. 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."

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

18. 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.

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

(ANOOP CHITKARA)
JUDGE

14.11.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.