

CRM-M-47299-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-47299-2024
Reserved on: 04.11.2024
Pronounced on: 18.11.2024

Raghu alias Raghav alias Ajay alias Maniya ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Randeep S. Dhull, Advocate
for the petitioner.

Mr. Viney Phogat, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
99	28.02.2021	Tohana City, District Fatehabad	398, 401, 379, 411 IPC and 25 of Arms Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973, seeking regular bail.

2. As per paragraph 13 of the reply filed to the bail petition, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	48	31.01.2021	323, 365, 427, 506, 147, 149 IPC	Azad Nagar, Hisar
2	189	2018	379 IPC	Shivaji Nagar Gurugram
3	67	2024	457, 380 IPC	Sadar Tohara
4	236	09.08.2018	309 IPC	Farrukh Nagar (Gurugram)
5	395	14.12.2017	307, 120B IPC and 25 of Arms Act	Narnaund
6	671	2023	25(B)(A), 54/59 of Arms Act	HMT Hisar
7	137	06.03.2024	174-A IPC	City Tohana
8	84	08.02.2021	174-A IPC	Narnaund (Hisar)
9	1	02.01.2021	379, 511 IPC	Civil Line, Hisar
10	308	2022	174-A IPC	Pataudi, Gurugram

3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“2. That the brief facts of the present case are that on 28.02.2021, complainant ASI Om Parkash along with ASI Jaiveer Sing No. 114, ESI

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Resham Singh No. 972, EHC Subhash Chand No. 757 with private laptop and printer in a Government Bolero No. HR22R-7819 driven by Rakesh Kumar No. 315, present at Kainchi Chowk, Tohana for patrolling and crime checking duty. Then, a secret information was received that three young boys at a secluded place on Lohakhera road adjacent to Newkam factory on Tohana-Hisar road were standing on the road side along with their motorcycle armed with weapons with them and they were planning to loot the passersby. If a raided immediately, then, they could be caught red handed. On believing the secret information to be reliable, ASI Om Parkash apprised the fellow police officials and prepared a raiding party and passers-by were informed about the information and were asked to join the raiding party, but everyone express their compulsion and left. Complainant further averred that he got removed the lights on the Government vehicle and reached near the place of information along with his fellow police officials and in the lights of vehicle, three young boys were seen standing on the road side, out of them one boy was giving signal with a torch light to stop. The police party stopped their vehicle and one young boy carrying a pistol in his hand came from the left side and put a fist blow on the bonnet of the vehicle and the other boy also carrying a pistol in his hand pointed the same towards ASI Om Parkash and demanded all the belongings. On this, ASI Om Parkash gave a lalkara and with fellow police officials alighted from the vehicle and apprehended the said young boy who had pointed the pistol towards him. ESI Resham Singh also apprehended the second boy having a pistol. ASI Jaivir Singh apprehended the third young boy. Upon inquiry, the boy apprehended by ASI Om Parkash disclosed his name as Shanker (co-accused) son of Jai Bhagwan, resident of Madina, District Sonapat and he was found carrying a country-made pistol of 32 bore loaded with one live cartridge. One another live cartridge of 32 bore was also recovered from the left pocket of his wearing pant. The boy apprehended by ESI Resham Singh disclosed his name as Arun @ Annu son of Dharam Singh, resident of Dharan, Police Station Tosham, District Bhiwani and he was also found having a country-made pistol of 32 bore loaded with one live cartridge. One another live cartridge of 32 bore was also recovered from the left pocket of his wearing pant. The third boy apprehended by ASI Jaivir Singh upon inquiry disclosed his name as Bhavya son of Arjun Kamra, resident of Ashok Vihar Colony, Kaimari Road, Hisar and he was having an iron road having length of 81 cms in his right hand and a torch in his left hand. The motorcycle make Hero HF Deluxe black & red colour, without number was found parked on the road side, chassis No. MBLHA11ARH9A01860 and Engine No. HA11EHH9A02206 was found. (Later on, during investigation, Registration number of the recovered motorcycle was found HR16S-2297 and same was found stolen and in this regard, a case FIR No. 479 dated 20.12.2020 under sections 379 of IPC at Police Station Kalanaur was already registered by its registered owner namely Sumit Kumar son of Kapoor Singh resident of Khedi Daulatpur, Tehsil Bawani Khera) The recovered weapons alongwith motorcycle were taken into police possession after converting the same into separated sealed parcels and taken into police possession. Upon which, present FIR was registered under sections 398/401 of IPC & 25-54-59 of Arms Police Station City Tohana and investigation was carried out.”

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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 their family.

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

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

"14. That the allegations against the petitioner/accused are grave and serious as in the present case, on 28.02.2021, police party headed by ASI Om Parkash had apprehended co-accused namely Shankar, Arun @ Annu and Bhavya while they were armed with weapons and were attempting to loot passersby and two country made pistols of 32 bore and four live cartridges of 32 bore were recovered from co-accused Shankar and Arun @ Annu whereas iron rod and torch were recovered from co-accused Bhavya. During investigation, co-accused Arun @ Annu suffered his disclosure statement (Annexure R-1) to the effect that petitioner-accused Raghu had given him two country made pistols 32 bore and four live cartridges, which were recovered from him (Arun @ Annu) and co-accused Shankar in the present case. Moreover, petitioner-accused Raghu has no good antecedents and he is a habitual offender as he is already involved in five other criminal cases. There is every likelihood that in case petitioner-accused is granted concession of regular bail, then he may again abscond from trial, may commit such like cases and may overawe prosecution witnesses. It is also pertinent to mention here that present FIR pertains to February, 2021 and due to absence of petitioner-accused Raghu, trial of the case could not proceed for a period of more than one year."

7. There is sufficient prima facie evidence connecting the petitioner with the alleged crime. However, pre-trial incarceration should not be a replica of post-conviction sentencing. As per paragraph 3 of the bail petition, the petitioner remained in custody from 28.02.2021 to 04.08.2022 and from 07.03.2024 till now. Accordingly, the petitioner's total custody in this FIR is more than 02 years. 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 further pre-trial incarceration at this stage.

8. 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.

9. 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.

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10. 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)	

11. 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.

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

13. 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.

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

(ANOOP CHITKARA)
JUDGE

18.11.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.