

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-53347-2024 (O&M)
Date of Order: 12.11.2024

Om Parkash @ Kala

... Petitioner(s)

Versus

State of Haryana

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Sandeep Saini, Advocate
for the petitioner(s).

Mr. Ashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
36	22.2.2017	Alewa, District Jind	307, 120B, 34 IPC and 25/54/59 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 bail petition and paragraph 11 of the reply, the criminal antecedents of the accused read as under:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	48	26.4.2003	304/34 IPC	Alewa
2	83	16.6.2006	61-1-14 Excise Act	Alewa
3	51	4.4.2016	61-1-14 Excise Act	Alewa
4	148	--	25 Arms Act	Alewa
5	21	31.1.2017	61-1-14 Excise Act	Alewa
6	184	28.10.2017	--	Alewa
7	53	17.4.2018	174-A IPC	Alewa
8	63	2016	25 Arms Act	Alewa

3. Facts of the case, as extracted from the status report filed by the State, reads as under:-

“2. That, the brief facts of the case are that on the statement of Rajesh S/o Sh. Balbir Singh, resident of village Shamdo, district Jind a case FIR No. 36 dated



22.02.2017 u/s 307, 120-B, 34 IPC read with 25-54-59 of Arms Act was registered at Police Station, Alewa on the allegations that on 21.02.2017, at about 6.30 p.m., when he was sitting on a chair then three boys came from back side. Sandeep S/o Sh. Ram Phal was having pistol in his hand and he fired gun shot toward him which was missed. The accused namely Vicky and Ankush, residents of village Pegan, both caught hold him and he tried to get him released from them after manhandling with them, but in the meantime Sandeep loaded second bullet in his pistol and fired gun shot upon him which stuck into his right side below chest(pashu). Then after getting him released from them when he tried to run away towards then from the back side Sandeep fired gun shot from his pistol which hit on his back. In this meantime his elder brother Suresh Kumar rushed towards there and on seeing his coming there, accused fled away from the spot on their motor cycle. Thereafter, he was brought to Civil Hospital, Jind for treatment and where doctor after giving first aid referred to PGIMS Rohtak. His brother Suresh Kumar got admitted him in Sapra Hospital, Hisar. He further alleged that Karan Singh S/o Sh. Ajit Singh resident of village Shamdo have hatched conspiracy with Sandeep etc. with the intention to eliminate him by shot of pistol. (Annexure P-1). The copy of MLR dated 21.02.2017 of injured Rajesh is being annexed as Annexure R-1.

3. That, after registration of case initial investigation of the case was carried out by local Police Station, Alewa. During the course of investigation of the case accused/ Juvenile-in-conflict with law namely Ankush S/o Sh. Ram Kumar, resident of village Pegan, was arrested in this case on 07.03.2017 and he was produced before the Principle Magistrate Juvenile Justice Board, Jind. It is further submitted that on 22.06.2017, Vicky @ Vikram S/o Sh. Karam Chand was arrested in this case. During the course of interrogation he made disclosure statement confessing his guilt in entirety and involvement of the petitioner-accused namely Om Parkash @ Kala and other co-accused. Further in furtherance of the disclosure statement, he got recovered one pistol 315 bore and one empty cartridge from his residential house which were taken into police possession through separate recovery memo.

4. That on 16.08.2017, facts and investigation of the case ADVOCATE verified by the then Deputy Superintendent of Police, Traffic Jind and during this course no incriminatory evidence came against Karan Singh S/o Sh. Ajit Singh, resident of village Shamdo came on file and he was found innocent in this case. On 11.09.2017 final investigation report in respect of the accused Vicky @ Vikram was prepared and filed in the concerned court.

5. That on 30.11.2017, the accused namely Sandeep S/o Sh. Ram Phal, resident of village Shamdo, who was arrested in another case FIR No. 336 dated 07.11.2017 u/s 302, 34, 120-B IPC read with 25 Arms Act Police Station Julana, was taken on transit remand and joined in the investigation of the case. During interrogation, he suffered disclosure statement that first bullet fired by him upon Rajesh was missed and thereafter the accused- Vicky had fired second gun shot which hit him and third bullet fired by him also hit to Rajesh on his wrist. It is further submitted that the fire arms used in commission of offence was already recovered by police of Police Station Julana in the aforementioned case. It further submitted that supplementary challan against the accused Sandeep was prepared and on 14.01.2018 the same was presented in the concerned Court.

6. That the arrest of the petitioner-accused namely Om Parkash @ Kala S/o Sh. Amani, resident of village Shamdo is concerned, it is submitted that on 18.04.2018, he was arrested in this case and enquiry was made from him. The petitioner-accused Om Parkash @ Kala suffered disclosure statement that



Sandeep S/o Sh. Ram Phal was having enmity with Rajesh s/o Balbir Singh and they have hatched conspiracy to commit his murder and Ankush S/o Ram Kumar, resident of village Pegan, was also included with them. As per plan, the accused Rajesh @ Raja, resident of village Shamdo gave one pistol and 4 cartridges each to Sandeep and Vicky @ Vikram and on 21.02.2017, they all have assembled at the residence of Sandeep at village Shamdo to fulfill the motive. On 22.02.2017, when Rajesh was sitting on chair behind liquor vend then the accused namely Ankush, Vicky @ Vikram and Sandeep in order to commit his murder fired gun shot upon him. A copy of the disclosure statement of the petitioner is being annexed as Annexure R-2. Further on 26.04.2018 supplementary challan against him was presented in the concerned court.

7. That the whereabouts of the accused Rajesh @ Raja, who was declared as the proclaimed offender in this case vide order dated 04.01.2018 passed by Ld. JMJC Jind, were not known, despite sincere efforts. On 05.04.2020, he accused was arrested in another case FIR No. 38 dated 05.04.2020 u/s 174-A IPC Police Station Alewa and thereafter, he was joined in the investigation of present case and enquiry was made from him. On having sufficient incriminatory evidence, he was arrested in this case. During interrogation, he suffered disclosure statement confessing his guilt in entirety. He disclosed that in the year 2016/17, Vikram @ Vicky s/o Karam Chand, resident of Pegan, Om Parkash S/o Amru, resident of Shamdo were partner in liquor vend. Sandeep son of Ramphal, Caste Pandit, resident of Shamdo, who is his friend, on 01-02-17 has came on parole from Jail Jind in murder case. He was also partner with us in liquor vend. Sandeep S/o Sh. Ram Phal was having enmity with Rajesh S/o Balbir Singh and they have hatched conspiracy to commit his murder and Ankush s/o Ram Kumar, resident of village Pegan, was also included with them. They (he, Om Parkash, Vikram @ Vicky EEP ADVand OCATE his friend Ankush) while present at the house of accused- Sandeep, resident of Pegan, had conspired to commit murder of Rajesh son of Balbir, resident of Shamdo. Further in furtherance of execution of plan, he had supplied one country made pistol of 315 bore and four cartridges to each, accused Sandeep and Vikram @ Vicky, each. He further disclosed that the aforesaid fire arms used in commission of offence were purchased by him from unknown Jaggery seller of UP in village which later on recovered by police from accused Vikram @ Vicky and Sandeep. At this stage, 201 IPC was invoked in this case.

8. That on 03.06.2020, supplementary challan against the accused Rajesh @ Raja was prepared and thereafter on 04.06.2020, the same presented in the concerned court. The Ld. Trial Court vide order dated 19.04.2022 has framed amended charges against all the accused including the present petitioner for the offences u/s **307, 34,120-B IPC and 25 Arms Act. In this case, the prosecution evidence has been closed and now the case is fixed on 16.11.2024 for statement u/s 313 Cr.P.C.**

9. That the petitioner was granted concession of regular bail by the Ld. Court of Additional Sessions Judge, Jind vide order dated 07.06.2018, Annexure P-2. On 27.05.2024, the petitioner- accused became absent from the trial of the case. Upon which vide order dtd 27.05.2024, Annexure P-3, his bail was cancelled and his warrant of arrest for 04.07.2024 was issued. It is pertinent to mention here that Petitioner-accused deliberately absented himself to evade appearance in this case. He was well aware of pendency of this case. On 02.09.2024, the petitioner has appeared in another case in another Court, but did not appear in this case. The petitioner- accused had hidden himself after sale of his ancestral land in the village. On 10.09.2024, after great difficulties, the petitioner was arrested in this case by SI Vinod Kumar from Nigdu, district Karnal where he was residing with his family and produced before the Ld. Court in this case.

10. That the petitioner filed 2nd application u/s 439 Cr.P.C. for grant of regular bail which was dismissed by the Ld. Court of Additional Sessions Judge, Jind vide order dated 04.10.2024, Annexure P-5. The Ld. Court of Additional Sessions Judge, Jind after considering all the facts and material on file has passed the order dated 04.10.2024, Annexure P-5, dismissing the bail application of the petitioner-accused which is reasoned one.”

4. The petitioner's counsel prays for bail by imposing any stringent conditions and further undertakes that the petitioner shall appear before the trial Court on each and every date.

5. The State opposes bail, especially on the ground that the petitioner is an habitual offender and many cases are pending against him.

6. Admittedly, the petitioner was granted bail in this case by the trial Court vide order dated 7.6.2018. Initially, he continued to appear before the trial Court, but on 27.5.2024, he did not appear, because of which the bail granted to him was cancelled and after that, he was arrested and produced before the Court on 10.9.2024.

7. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the *prima facie* analysis of the nature of allegations, the undertaking given by the petitioner’s counsel that he will appear on each and every date and the other factors peculiar to this case, there would be no justifiability for 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. This order shall come into force from the time it is uploaded on this Court's official webpage.

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 Illaqa 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.

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. This order is subject to the petitioner’s complying with the following terms. 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.** It is clarified that the petitioner shall appear before the trial Court on each and every date and comply with all the terms and conditions of the bail order or any other condition imposed by the trial Court. In case the petitioner misses even a single date without any justifiable cause, it shall be permissible for the trial Court to cancel the bail granted to the petitioner and it shall also be a factor to be considered by the Court that despite giving assurance to this Court, the petitioner has defied the order of this Court. All pending application(s), if any, shall stand disposed of.

(ANOOP CHITKARA)
JUDGE

November 12, 2024
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Whether speaking/reasoned : Yes

Whether reportable : No