

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

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**CRM-M-57308-2023 (O&M)**

**Reserved on 15.10.2024**

**Pronounced on 21.10.2024**

\*\*\*\*

Nishan Singh

... Petitioner

VS.

State of Haryana

... Respondent

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**CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL**

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Present: Mr. Vinod Ghai, Senior Advocate with  
Mr. Arnav Ghai, Advocate for the petitioner

Mr. Chetan Sharma, DAG Haryana

Mr. GS Dhot, Advocate for the complainant

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**Sandeep Moudgil, J.**

(1). This is a petition under Section 439 CrPC filed by the petitioner seeking regular bail in case FIR No.259 dated 17.07.2016 registered under Section 307 IPC and Sections 25, 27 of Arms Act, 1959 (Sections 506/195 IPC added and Section 27 of Arms Act deleted later on) registered at Police Station Rania, District Sirsa (Annexure P1).

(2). Brief facts, as culminating in the FIR which was lodged at the instance of Devender Singh, is reproduced hereunder:-

*“That brief facts of the case are that FIR No.0259 dated 17.07.2016 under section 307/506/195 IPC & Section 25/24/54/59 Arms Act was registered on the statement of Devender Singh s/o Dalbir Singh, wherein he has alleged that on 16.07.2016 evening I and Virender Singh were going to our houses in our respective cars. When we reached near Jiwan Nagar, then Virender Singh told him on phone that we have to go back to Rania, because Purushotam Singh son of Jangir Singh, caste Jat Sikh, resident of Santnagar has to take the medicine to be put in the paddy from*

*Rania I parked my car i20 No.HR44G/9392 Bhangu Petrol Pump, Jiwan Nagar and after sometime at about 9:00 PM Virender Singh alongwith Purushotam Singh and his friend whose name I do not know came to the Petrol pump from Sant Nagar in his car Verna No. HR-44H/3250. From there, I also accompanied them and came to Rania. Purushotam Singh took the medicine lying at a tea-shop opposite the Anaj Mandi. Rania and proceeded back to Jiwan Nagar in the same car. When we reached Jiwan Nagar Chowk, near the police barrier a Scorpio car No.HR44H/9002 was parked. By crossing it all four of us, reached Bhangu Petrol Pump Jiwan Nagar in the car. Upon reaching there, we were just standing there that one Scorpio car No.HR44H/9002 followed us and reached there and from that car Nishan Singh Chhanna son of Sohan Singh caste Jat Sikh, resident of Harni Kalan came down and had come towards us and said that how you crossed me in your car rashly. On this issue, Purushotam and Nishan Singh had altercation between them I, Virender Singh and the friend of Purushotam intervened and separated them and Nishan Singh also left from there in his car. I went towards the car which was parked in the petrol pump. In the mean time, Nishan Singh turned back his car and came to the Petrol pump and after parking the car near the fuelling machine, came down and Nishan Singh took 315 bore rifle from the car and directly fired shot on Purshotam, which was standing near the Verna Car. The bullet hit in the stomach of Purshotam Singh and he fell down. Nishan Singh fired another shot on us, which missed. He fired third shot on the driver side window of Verna Car, which crossed the body of the car and hit in the foot of Virender Singh and by crossing his foot, hit in the second foot and Nishan Singh immediately fled from the site alongwith his rifle in the car. I and friend of Purushotam took the injured Purushotam and Virender Singh in the car and reached at Govt. Hospital, Sirsa for treatment. There after getting the MLRS issued, the injured were got admitted in Life Line Hospital for*

*treatment. There the doctor referred Purushotam to Higher Centre. Nishan Singh alias Kala without any cogent reason has fired shots from their rifle.”*

(3). Learned counsel for the petitioner submits that after the lodging of FIR, the villagers of the petitioner's village moved applications (Annexures P2 to P4) to the Chief Minister and Human Rights Commission in protest that the petitioner has been wrongly roped in the FIR and that in fact the complainant had fired at the vehicle of the petitioner and Purushottam Singh injured along with his accomplices had chased the petitioner and were the aggressor party which stands corroborated from the scene of crime report dated 08.08.2016 wherein it has been categorically reported that a cross-firing had occurred between the complainant and the petitioner.

(4). It is further contended that in the FSL report, it has transpired that the fire arm was used by the complainant party and the fact of firing in the air to scare away the petitioner with his 32 bore licensed weapon which was taken by Purushottam Singh were not mentioned by the complainant in his supplementary statement. He further submitted that there was no previous enmity between the parties nor there being any intention or knowledge that the shot would hit someone and as such no offence under Section 307 IPC is made out.

(5). Learned senior counsel then urged that the petitioner was declared as proclaimed person on 15.12.2016 as he could not surrender because of his family circumstances as his father Sohan Singh was also made accused however, he was later on arrested on 30.05.2023 in FIR No.2278 dated 30.05.2023 under Section 174-A at Police Station Rania despite the fact that he

himself surrendered but the police has shown his arrest in the above said FIR which is apparent from the fact that the FIR is of the same date as his arrest i.e. 30.05.2023.

(6). On the other hand, learned State counsel has filed status report dated 23.02.2024 filed by Ajaib Singh, HPS, Deputy Superintendent of Police, Ellenabad after giving facts of the occurrence, it has been stated that after carrying out investigation, as per the MLRs (Annexures R1 & R2), one injury on stomach was found on the person of Purshotam Singh and two fire arm injuries above the knee and below the right knee were found on the person of Virender Singh. It has been further stated that Verna Car of the complainant and Scorpio car of the petitioner were taken into possession and one sikka (part of bullet) was recovered from the glass of car of the petitioner. Besides, CCTV footage of the Bhangu petrol pump i.e. the place of occurrence was also obtained. Thereafter, Section 212 IPC was added and Sohan Singh father of the petitioner was arrested on the statement of Pargat Singh s/o Dalbir singh on the allegation that Sohan Singh is helping his son, who is absconding, and providing him clothes and cash amount. Later on Sohan Singh was acquitted vide judgment dated 31.10.2022.

(7). He further submitted that demarcation of the place as per his disclosure statement was carried out and rifle 315 bore was recovered from the house of the petitioner. He then submits that investigation in the case is complete and challan has been presented on 03.08.2023 and charges are already framed on 10.10.2023 and the matter is on trial for prosecution evidence. Besides, the status report also enlists the details of as many as 5 FIRs against the petitioner involving offences of similar nature and in one FIR No.216 dated

24.11.2012 under Sections 323/341/148/149/506/307/302/120-B IPC, registered at PS Rania, the petitioner has been convicted and as such since he is having previous history of criminal cases, the petitioner does not deserve to be released on regular bail.

(8). Heard learned counsel for the parties and gone through the record.

(9). It appears that the instant FIR was registered on the statement of Devender Singh that the petitioner had fired bullet shots which hit in the stomach of Purushotam and other shots hit Virender Singh's one leg and then hit the thigh of his other leg excluding the shots which hit the verna car of the complainant.

(10). One of the complainant Purushotam Singh s/o Jagir Singh r/o Village Sant Nagar, Sirsa made a statement before the police giving the first-hand details of the whole incident, the relevant portion thereof reads as under:-

*“...All four of us reached Jiwan Nagar Chowk. There near the police barrier, one Scorpio car No.HR-44-H-9002 was already standing there. By crossing it, we reached at Mangu Petrol Pump, Jiwan Nagar. Upon reaching there, we had just standing there that one Scorpio car No.HR-44-H-9002 followed us and reached there and from that car Nishan Singh @ Chhanna son of Sohan Singh, caste Jat Sikh resident of Harni Kalan came down and had come towards us and said that how you crossed me in your car rashly. On this issue, Nishan Singh started altercating with me. My friends Narender Singh etc. intervened and Nishan Singh left from the Petrol pump in his car. Devender Singh went towards his car I-20 No.HR-44-J-9293 already parked at the petrol pump. I was also going towards that side. In the meantime, Nishan Singh by going for some distance in his car, again turned his car back and came to the petrol pump and after stopping his car near the*

*fuelling machine, came down of the car. He was carrying a rifle and said that I have come back and now I would not leave you alive. I tried to convince and explained to him. At that time, Nishan Singh, with the intention to kill me with the rifle, fired a direct shot on me. The shot hit in my stomach and I fell down. Nishan Singh fired second shot towards my friends, which was missed and fired third shot towards the driving seat of Verna car. It hit Virender Singh sitting on the seat. While lying down, I fired a shot in the air with my revolver, otherwise, Nishan Singh would have killed all of us. Upon seeing the shot in the air, Nishan Singh fled from the spot alongwith his rifle in his car. My friends Narender and Devender Singh put me and Virender Singh in the car in an injured condition and took us to G.H. Sirsa for treatment...”*

(11). The complainant himself made a supplementary statement under Section 161 CrPC corroborating his earlier statement which culminated into the present FIR, wherein he deposed that Nishan Singh – the petitioner had attacked him, Virender Singh, Narender Singh, and Purushotam Singh. The relevant portion of the said supplementary statement also needs to be reproduced and the same reads as under:-

*“While corroborating my earlier statement, it is stated that I am the resident of the above address. On 16.07.2016, Nishan Singh son of Sohan Singh, resident of Harni Khurd Sirsa had attacked on me, Virender Singh, Narender Singh, Parshotam Singh with his 315 bore rifle with the intention to kill us. that time, I At was having 32 bore licensed revolver with me. Parshotam Singh took the revolver from me and fired shots in the air in our defence. After attacking on us, Nishan Singh had fled from the site with his 315 bore rifle. Now I have submitted the certified copy of my arms license No.9165/DM/SSA. I have got my statement recorded, heard and is correct.”*

(12). In his supplementary statement, the complainant deposed that he was carrying his 32 bore licensed weapon and Purushotam Singh had taken the weapon from him and fired it in air but if the said deposition is compared with the FIR coupled with the statement of Purushotam Singh (complainant party), this fact is completely belied by his earlier version wherein it was stated that the complainant was standing at a different place and Purushotam Singh was fired at a different place. The improved version from the complainant side i.e. by Purushotam is on 06.09.2016 which he deposed after about one month from the date when report of FSL report came to be released on 08.08.2016.

(13). The complainant by improvising the story, have tried to project as if he fired in the air only to scare away the petitioner which was apparently an attempt to make out a case in consonance with crime scene report/FSL report and the said facts were conspicuously missing in the FIR itself. The vehicles of both the petitioner and the complainant were sent for FSL examination and vide its report (Annexure P8) it has been found that the complainant hit various bullet shots on the Scorpio car of the petitioner. Even in the trial proceedings of Sohan Singh, the complainant in his cross-examination stated that Purushotam Singh had used four rounds upon the petitioner. It thus can be seen from the record and the FSL report that the complainant had fired at the petitioner more than once which hit their car and this fact has been sought to be suppressed.

(14). There cannot be any gainsaying to the fact that both the petitioner and the complainant party were found to have carried out cross-firing at on each other in what it has been projected to be a case of road rage and in a fit of

moment, the parties made an attempt to save themselves and fired or responded to the fire-shots of the other party in self-defence.

(15). As far as the pendency or involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as ***“Baljinder Singh alias Rock vs. State of Punjab”*** decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would lend the petitioner in a situation of denial the concession of bail.

(16). That apart, challan in the present case has been filed on 03.08.2023; investigation is complete and charges have been framed on 10.10.2023 and out of 28 PWs, only 2 witnesses 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 to be effected by the police from the person of the petitioner.

(17). 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.*

(18). 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 28 PWs, only 2 PWs have been examined so far and in that eventuality, it is abundantly clear that it will take certainly long time to conclude and also considering the fact that the petitioner has completed 1 year 2 months and 10 days of incarceration as on 12.08.2024, keeping him detained 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".

(19). 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.

**21.10.2024**

V.Vishal

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

**(Sandeep Moudgil)**  
**Judge**

Yes/No  
Yes/No