

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-72-2023 (O&M)

Reserved on: 07.03.2024

Date of Decision:- 02.04.2024

AJAY

.....APPELLANT

Vs.

STATE OF HARYANA AND ANOTHER

...RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

(As on the reserved date)

Present: Mr. Narender Kaajla, Advocate,
for the appellant.

Mr. Amrik Singh Narwal, D.A.G. Haryana.

Mr. Varun Veer Chauhan, Advocate,
for respondent No. 2.

HARPREET KAUR JEEWAN, J.

1. The appellant through the instant appeal under Section 14-A (2) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short '*the Act of 1989*') is seeking setting aside of order dated 28.10.2022, whereby learned Additional Sessions Judge, Fatehabad has dismissed the application of the appellant seeking regular bail in FIR No.144 dated 06.05.2022 registered at Police Station Bhuna, District Fatehabad under Sections 307, 323 and 506 read with Section 34 of Indian Penal Code, 1860 (for short '*the IPC*'), Section 25 of the Arms Act, 1959 and Section 3(1) (i) of the Act of 1989 (Sections 294 and 354-A(1) IPC were added later on).

2. The case of prosecution is that on 05.05.2022, Pawan son of Ramphal at about 06:00 PM had gone to Johar of the village for a stroll where Rama son of Nafe Singh, Kala son of Baru and one unknown person were standing. When Pawan came near to them to cross his path, Rama and Kala passed casteist remarks and unknown person fired on him which hit on his back.

2.1 As per the status report filed by the State by way of an affidavit of Sh. Sanjay Kumar, HPS, Deputy Superintendent of Police, Bhuna District Fatehabad, during the investigation on 09.05.2022, the statements of Jai Bhagwan the uncle of the injured Pawan and his sister Pxx were recorded. The appellant Ajay was arrested on 18.05.2022 and during inquiry he disclosed that he had a country made pistol .315 bore with a loaded cartridge and he fired on the complainant with the said pistol at the behest of his co-accused. After this, the appellant and his co-accused Dayanand alias Rama were arrested on 09.05.2022 in a case of robbery in Barwala Police Station along with a country made .315 pistol and cartridges. The recovery of the country made pistol was effected in the said case.

2.2 It is further alleged in the status report that during the investigation, Test Identification Parade of the appellant was also got conducted and the complainant (injured) Pawan identified the appellant.

2.3 As per the status report, the following cases were also registered against the present appellant:-

“1. FIR No. 465, dated 01.05.2022, under Sections 392 of the IPC and Sections 24/25/59 of the Arms Act, 1959, registered at Police Station Barwala.

2. FIR No. 489, dated 10.05.2022 under Sections 25-54-59 of the Arms Act, registered at Police Station Barwala.”

3. Learned counsel for the appellant *inter alia* contends that the appellant has been falsely implicated in this case. He is not named in the FIR. No offence under Sections 307, 323, 294, 354-A and 506 of the IPC and Section 25 of the Arms Act is made out against the appellant. There are no allegations constituting the offence under Section 3 (1) (i) of the Act of 1989. The appellant is in custody since 18.05.2022.

3.1. It is further contended that after completion of the investigation, the final report (‘*challan*’) under Section 173 (2) Cr.P.C. has already been presented. No recovery was effected from the appellant in this case. The co-accused of the appellant namely Narender @ Kala has already been granted the concession of bail by the co-ordinate Bench of this Court, vide order dated 01.06.2023 passed in CRA-S-1527-2023. No prosecution witness has been examined as yet and the trial is yet to commence. He also submits that in the aforesaid two cases, i.e. FIR No. 465 dated 01.05.2022 and FIR No. 489, dated 10.05.2022, the appellant has been acquitted by the learned trial Court.

4. Learned counsel for the State has opposed the present appeal on the ground that the appellant is the main accused and he has been attributed a fire arm injury to the complainant. However, this fact has been confirmed that the appellant has been acquitted in FIR No. 465 dated 01.05.2022 and FIR No. 489, dated 10.05.2022. He also confirmed the fact that the final report (‘*challan*’) under Section 173 (2) Cr.P.C. has already been presented before the trial Court and the country made pistol .315 bore

was recovered in the other case.

5. Learned counsel appearing for the complainant also opposed the present appeal. He submits that the appellant is a habitual offender. The offences are very serious in nature and therefore, prays for dismissal of the present appeal.

6. I have considered the aforesaid contentions.

7. The appellant is in custody since 18.05.2022. The appellant is not named in the FIR. He is alleged to have been identified during the Test Identification Parade. Though the appellant is alleged to have a history of two other cases but he has been acquitted in both cases by the trial Court. The said fact has also been confirmed by learned State counsel. The recovery of weapon was not effected from the appellant in the present case but it is alleged be effected in the other case in which he is stated to be acquitted. The final report (‘*challan*’) has already been presented before the trial Court. There are 24 prosecution witnesses and no one has been examined so far. The conclusion of the trial will take time. The prosecution has not led any convincing/plausible documentary or oral evidence indicating any possibility of the appellant fleeing from justice or tampering the evidence or winning over/threatening the witness.

8. Keeping in view the aforestated facts and circumstances, this Court is of the considered opinion that present appeal deserves to be allowed and is therefore accordingly allowed. The appellant is ordered to be released on bail subject to conditions as may be imposed by Trial Court/Illaqa/Duty Magistrate concerned and order dated 28.10.2022 passed by Additional Sessions Judge, Fatehabad is hereby set aside.

9. If the appellant or his family members/associates make any attempt to threat/intimidate the witnesses in the present case, the State shall be at liberty to move an application for cancellation of bail granted by this order.
10. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the Trial Court shall proceed without being prejudiced by observations of this Court
11. Pending miscellaneous applications, if any, also stand disposed of.

(HARPREET KAUR JEEWAN)

JUDGE

April 02, 2024

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Whether Speaking	Yes
Whether Reportable	No