



**130 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH**

**CRM-M-10251-2025
Date of decision: 24.02.2025**

SHEIKH RAJIT ALIAS SHIEKH RAJID

...PETITIONER

V/S

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ashish Pandey, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. Prayer in the present petition filed under Section 528 BNSS, 2023 is for quashing of FIR No.98 dated 18.06.2024 registered under Sections 307/160/427/148/149/506 IPC and Sections 25/27 Arms Act at P.S. Haibowal, Ludhiana (Annexure P-1) and all the subsequent proceedings arising therefrom including the challan (Annexure P-3).

2. That brief facts of the case leading to the filing of the present petition is that when respondent No.2/complainant was patrolling near Sangam Palace Chowk, Ludhiana with other officers then secret informer told him that in the intervening night of 17/18.06.2024 at about 11:15 AM about 20/25 boys including accused Romiz alias Romi, Varinder alias Mani, Sunil Sahota, Vikas Chabaria, Bilal, Bobby, Akasdeep Maan, Vinay Samy, Cheeni *alias* Sam Rawat, Rahul Shooter, Sahmmi, Gaurav Ladia, Deepak Ladia alongwith some unknown 10-15 boys armed with deadly weapons in order to kill Sahil Kanda S/o Ashok Kumar came in street no.3 Mohalla Chander Nagar and thereafter they attacked upon his house with bricks, stones and glass bottles. It



has been further alleged in the FIR that the aforesaid persons had thrown stones and bricks upon the house of neighbours and also caused damage to the vehicles parked nearby. On the said allegations, FIR (*supra*) was registered.

3. Learned counsel for the petitioner *inter alia* contends that there is no evidence available on record to remotely connect the petitioner with the alleged incident. Further, the petitioner is neither named in the FIR (*supra*) nor any incriminating has been recovered from his possession. The purported victim, as per the case set up by the prosecution, is Sahil Kanda and his statement has not been recorded by the jurisdictional police authorities. Further, the factual ingredients breaching the threshold of Section 307 of IPC are clearly missing. Additionally, the petitioner has a *prima facie* proof of his *alibi* in the shape of CCTV footage, which does not in any manner show the presence of the petitioner at the place of incident. He further submits that till date, final report under Section 173 Cr.P.C. is filed only against 07 persons and remaining accused are yet to be arrested. Furthermore, the petitioner is having clean antecedents.

4. *Per contra*, learned State counsel appears on advance notice opposes the prayer made by the petitioner on the ground that only on the basis of plea of *alibi*, the FIR (*supra*) cannot be quashed and the probable defence set up by the petitioner can only be gone into by learned trial Court on the basis of evidence adduced by the parties. The fire arms have been recovered from the accused in the instant case and whether offence under Section 307 of IPC is made out or not, would be seen by the trial Court, at the time of framing of the charges.

5. Having heard learned counsel for the parties and after perusing the record of the case, this Court finds no merit in the present petition as the



disputed question of facts can be determined only on the basis of the evidence led by the parties. The probable defence set up by the petitioner, in the present petition, cannot be appreciated at this stage.

6. It is settled law that disputed questions of fact can only be adjudicated after the parties have duly adduced their evidence. The High Court, in exercise of its inherent powers under Section 482 Cr.P.C is obliged to make a just and equitable choice and cannot go beyond its ambit to evaluate the truthfulness of the allegations or the veracity of the defence, however, convincing it might seem. Any such attempt would be impermissible in law as it would amount to giving finality to the accusations even before the prosecution is allowed to adduce evidence to substantiate the same.

7. A two Judge Bench of the Hon'ble Supreme Court recently examined this issue in ***Rathish Babu Unnikrishnan Vs. State (Govt. of NCT of Delhi) and another*** 2022 SCC Online SC 513 and speaking through Justice Hrishikesh Roy, made the following observations: -

“17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum, i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.”



8. A two Judge Bench of the Hon'ble Supreme Court in ***HMT Watches Ltd Vs. M.A. Abida (2015) 11 SCC 776*** has held as under: -

“10..... Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties.”

9. In ***Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458***, decided by the Hon'ble Supreme Court, following observations were made: -

“17. As is clear from the above observations of this Court, it is well settled that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of fact.”

9. In view of the above discussion, this Court cannot examine the probable defence of the petitioner set up in the present petition and scuttle the proceedings before the trial Court. The disputed questions of fact and the probable defence of the petitioner can only be seen by the trial Court on the basis of evidence adduced by the parties.

10. Accordingly, present petition stands dismissed being bereft of any merit.

11. Nothing observed hereinabove shall be construed as expression of



opinion of this Court on merits of the case and trial Court shall proceed without being prejudiced by observations of this Court.

February 24, 2025
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(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |