

HIGH COURT OF PUNJAB AND HARYANA**Bench: HON'BLE MR. JUSTICE ARUN MONGA****Date of Decision: October 12, 2023****Sandeep @ Tinda****versus****State of Haryana****Sections, Acts, Rules, and Article Mentioned in the Judgment:**

- Sections 216, 302, 323, 452, 506, 148, and 149 of the Indian Penal Code, 1860 (IPC)
- Sections 25 and 27 of the Arms Act, 1959 (Arms Act)
- Section 174 of the Code of Criminal Procedure, 1973 (Cr.P.C)
- Section 506 of IPC

Subject of the Above Judgment:

Bail undertrial in a case involving charges under IPC and the Arms Act, based on an alleged old feud and violent incident.

Headnotes

Criminal Appeal – Bail – Denial of bail by trial Court – Petitioner seeks release as an undertrial – Offense under IPC and Arms Act – Alleged involvement in an old feud – Co-accused granted bail – Insufficient evidence of complicity – No likelihood of tampering with evidence – Lengthy preventive custody – Petitioner's personal circumstances – Grant of bail. [Para 1-13]

ARUN MONGA, J. (ORAL)

Following the denial of bail by the learned trial Court, the petitioner is now before this Court seeking his release as an undertrial in a case bearing FIR No.595 dated 06.10.2022, registered under Sections 216, 302, 323, 452, 506, 148 read with Section 149 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and Sections 25 and 27 of the Arms Act, 1959 (hereinafter referred to as 'Arms Act'), at Police Station, Tehsil Camp, Panipat, District Panipat, Haryana.

2. According to the prosecution's account, the complainant, Jogender, a resident of Deshraj Colony in Panipat, alleged an old feud with Parveen, the son of Sunil. On October 6, 2022, around 12:15 a.m., Parveen, Chintu, Sunil, Rakesh, Mintu, Sadhu, Bholu, Sonu, Tinku, and Sandeep (petitioner) confronted Jogender's father, who was asleep in his room. In response, the complainant, along with his father and brother, went to Parveen's house. As they approached the street, Parveen, Sadhu, the petitioner, and his family members began hurling bricks from their

rooftops. While attempting to escape, Parveen fired a gunshot from his gun (doga), and Sadhu and Maha fired multiple shots from their homemade pistol. Tragically, one of these shots struck Jogender's brother, Dinesh, in the chest and shoulders, leading to his demise. Dinesh was rushed to the Government Hospital, where doctors pronounced him dead. Subsequently, an FIR was filed, and Section 174 Cr.P.C. proceedings were initiated. Witness statements were Neutral Citation No:=2023:PHHC:133036 2023:PHHC:133036 CRM-M-50775-2023 (O&M) recorded, and an investigation commenced. During the investigation, the petitioner was arrested on January 7, 2023, and has been in custody since then.

3. First and foremost, the learned counsel for the petitioner argues that the co-accused, RahulKukreja, was already granted bail by this Court, as per the order dated September 20, 2023, passed in CRM-M-39208-2023. The role attributed to the petitioner is on a much lesser footing than the co-accused, and yet he continues to languish in jail. 3.1. The learned counsel contends that there was an old enmity between the complainant and the co-accused, Parveen. No specific role or injury has been attributed to the petitioner. According to the post-mortem report (Annexure P-2), the gunshot injury is the cause of death of the brother of the complainant, which is allegedly attributed to the co-accused, Parveen. There is no incriminating evidence or material to show the complicity of the petitioner in the alleged offense.

3.2. Finally, he submits that nothing is to be recovered from the petitioner, and he is not required for further custodial interrogation. There is no likelihood of the petitioner tampering with evidence or influencing prosecution witnesses. The learned counsel fairly concedes that the petitioner was involved in one case, FIR No.171 dated 04.05.2020, but he has been acquitted in that case vide judgment dated 13.09.2023 (Annexure P-4) passed by JMJC, Panipat. Another case under Section 506 of IPC has been lodged against the petitioner by the brother of the complainant after the incident, only to create evidence and to magnify the gravity of the offense.

4. On the contrary, learned State counsel strenuously opposes the petition, expressing concerns about the possibility of the petitioner fleeing from trial proceedings if granted bail. Also argues that the petitioner has committed a serious offense. On a Court query, learned State counsel does not controvert that co-accused has already been granted bail by this Court.
5. I have heard the rival arguments and reviewed the case file.
6. In response to a query from the Court, under instructions from SI Ranbir Singh, learned Statecounsel informs that the challan has already been

filed and charges were framed on March 27, 2023. Of the forty witnesses, none has been examined so far.

Neutral Citation No:=2023:PHHC:133036 2023:PHHC:133036 CRM-M-50775-2023 (O&M) Thus, the investigation regarding the petitioner is complete, and he is not required for custodial interrogation.

7. At this stage, the allegations against the petitioner are subject to trial. The trial's progress has been slow, and it is anticipated to take a considerable amount of time. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since January 07, 2023, for more than 09 months.
8. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that he might tamper with evidence or influence witnesses. There is no probability of tampering with evidence as it has already been seized by the investigating agency.
9. The petitioner is stated to be a 36-year-old married person having two minor children and sole bread winner of the family. Being a family man and having a fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.
10. Considering the overall scenario, without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served by keeping the petitioner in further preventive custody.
11. Accordingly, the petitioner is ordered to be released on bail, in case not required in any other case, upon furnishing bail bonds and surety bonds to the satisfaction of the learned trial Court, where his case is being tried, and in case he/she is not available, before the learned Duty Judge, as the case may be.
12. In case the petitioner is found involved or gets involved in any offense while on bail, the prosecution shall be at liberty to seek the cancellation of his bail in the instant case.
13. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on the merits of the case, as they are for the limited purpose of the bail hearing alone, and the learned trial Court shall proceed without being influenced by this order.

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14. Pending applications, if any, shall also stand disposed of.

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