

(2023) 04 P&H CK 0076

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 19407 Of 2023

Sajid @ Boda

APPELLANT

Vs

State Of Haryana

RESPONDENT

Date of Decision : 29-04-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 173, 439
Indian Penal Code, 1860 — Section 148, 149, 302, 307, 323, 325, 506
Arms Act, 1959 — Section 25

Citation : (2023) 04 P&H CK 0076

Hon'ble Judges : Vikram Aggarwal, J

Bench : Single Bench

Advocate : Rakesh Nehra, Ankit Yadav, Chirag Kundu, Surender Singh

Final Decision : Dismissed

Judgement

Vikram Aggarwal, J

1. The present petition has been preferred under Section 439 Cr.P.C., for the grant of regular bail in case FIR No.583 dated 03.11.2022, registered under Section 148, 149, 323, 325, 307, 302, 506 and under Section 25 of Arms Act 1959, at Police Station, Sadar Nuh, District Nuh, Haryana.

2. On a complaint submitted by one Tahir S/o Sahid, the present FIR was registered. As per the complainant, the notification regarding election for the post of Sarpanch in their Village Meoli, Police Station Nuh, District Nuh, was issued on 7-8 October, 2022 and his uncle Wahid S/o Badlu was a candidate. One Sakir S/o Jabbar was the candidate of the opposite party and the Government Secondary School, Meoli was chosen to be the booth for the casting of votes. It was stated by Sakir S/o Jabbar and his family members that the booth was near to their house and that Wahid's voters will not be permitted to vote and that they would capture the booths and if any one tried to stop them from capturing the booth, they would even resort to shooting. An application was also given to the police regarding this by the complainant side. The elections were scheduled for

02.11.2022 and the same started at 7.00 A.M. Around 11.30 A.M., 93 persons (as named in the FIR) were sitting ready, having guns, country made pistols and sticks in their hands. At that time, Tahir S/o Saheed came to cast his vote. The moment he reached the school, the above said people threatened him and asked him not to cast his vote. Tahir was slapped on the face by Abdulla S/o Mohdi. An altercation ensued and then firing took place, the details of which were given in the FIR. Many persons got injured and were taken to hospital from where some persons were referred to higher centers. One person is stated to have expired and many are stated to have been injured. The present petitioner was named by one Mois in a statement given by him on 09.11.2022, wherein it was stated that the present petitioner fired at him, as a result of which he suffered a pellet injury on his chest.

3. I have heard learned counsel for the parties.

4. Custody certificate was filed by learned counsel representing the State of Haryana.

5. Learned Senior counsel representing the petitioner submitted that the petitioner has been falsely implicated since the statement was given by the injured Mois S/o Zakir under Section 161 Cr.P.C., on 09.11.2022 i.e., one week after the alleged incident. It has been submitted that initially 93 persons were named in the FIR and subsequently, the total number of accused went up to 115 out of which 93 have been found to be innocent by the Investigating Agency. It has been submitted that this in itself shows that many persons were falsely implicated. Learned Senior counsel has submitted that the present petitioner was not named in the FIR nor was any recovery made from him. It has been contended that the petitioner is in custody since 13.11.2022; final report under Section 173 Cr.P.C., has been submitted; charges are yet to be framed; trial will still take a sufficiently long time and therefore no useful purpose would be served by keeping the petitioner in custody any longer. It has been submitted that co-accused Nijamu had been granted regular bail by the Additional Sessions Judge, Nuh, while bail was wrongly declined to the petitioner.

6. On the other hand learned counsel for the State has submitted that 32 persons were injured in the incident and one person expired. It has been contended that there is a specific allegation against the petitioner that he had fired a gunshot upon the injured Mois. It has been submitted that this allegation is corroborated by the medical evidence. Learned State counsel has further contended that the main accused is yet to be arrested. It has been contended that if the petitioner is released on bail, he may abscond and there is every likelihood of his trying to influence and threatened the witnesses.

7. I have considered the submissions made by learned counsel for the parties.

8. A scary and violent incident took place in a small village of a remote District on 02.11.2022. One person expired and more than 30 were injured. Shots were fired; sticks/rods and various other kinds of weapons were used. Injured were

taken to different hospitals. On 09.11.2022, one of the injured namely Mois specifically named the present petitioner and alleged that he had fired a gunshot straight on him and its pellet hit him on the left side of his chest. His Medico Legal Report (MLR) is on record as Annexure P-2, which mentions a penetrating wound of size 0.5X0.5 CM on the chest. Bleeding and Blackening was present. The petitioner was arrested on 13.11.2022. The main accused is yet to be arrested. Even if the fact that the main accused is yet to be arrested is ignored, the fact remains that there is a specific allegation against the petitioner by an injured person. The non-recovery of any weapon would not be relevant as the arrest was on 13.11.2022 i.e. more than 10 days after the incident. In any case, these things shall be considered during the course of the trial. The final report under Section 173 Cr.P.C., has been submitted. The complainant and other injured witnesses shall be examined during the course of the trial. If the petitioner is released on bail, he may abscond and may also try to influence or threaten the witnesses. The grant of bail to co-accused-Nijamu, would not help the petitioner as the role attributed is stated to be different and the petitioner is alleged to have given a gunshot injury to the injured-Mois.

In view of the aforementioned facts and circumstances, I do not find any merit in the present bail application and the same is hereby dismissed.