

CRM No. M-21031 of 2015
DECIDED ON: AUGUST 25, 2015

.....PETITIONER

STATE OF HARYANA

.....RESPONDENT

- 1. Whether Reporters of local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Present: Mr. Rakesh Nehra, Advocate
for the petitioner.

Mr. Anil Mehta, DAG, Haryana.

JASPAL SINGH, J

This is a first petition preferred by Karamvir under Section 439 Cr.P.C. seeking regular bail in case FIR No. 65 dated 08.02.2014 under Sections 302, 34 IPC and Section 25 of Arms Act, Police Station Sampla, District Rohtak.

2. The case has been registered on the basis of statement of Tejbir son of Ishwar Singh resident of Village Balliyana, District Rohtak. The true translation of FIR reads as under:

“Stated that I am resident of above mentioned address and running a small shop in the village itself. We are four brothers, eldest one is Rajbir, then I, younger to me Yudhvir and youngest was Ombir. We have a combined family. Ombir was unmarried. We have installed electrical tubewell in our fields alongwith the river. Most of the time Ombir use to do farming and lookafter that. He use to irrigate the nearby fields on rental basis through electrical tubewell. Yesterday, on 07.02.2014 approximately at 8.00 PM in the evening he took an

electricity bulb from my shop and went to the fields after having dinner. Ombir was to irrigate wheat crop of our neighbour namely Hawa Singh s/o Lakhmi r/o Balliyana. They on 08.02.2014 approximately at 6.00 AM Krishan who is my paternal Aunt's son reached in the fields to give tea at that time Ombir was lying in dead condition near the gate of small room below the coat in a pool of blood. Krishan came back home and told me and my father. I and my father alongwith other family members and co-villagers reached on the spot and found Ombir lying dead in a pool of blood. He had fire shot wounds over his chest, abdomen and jaw. My brother Ombir has been murdered by some unknown persons due to unknown grudge by firing shots. Legal action be taken”.

3. It has been contended by learned counsel for the petitioner that instant case has been registered against unknown persons, it being a blind murder. However, subsequent thereto registration of case, petitioner has been falsely implicated in the instant case. In fact, he is an innocent person and has nothing to do with the commission of alleged offence.

4. It has further been contended by learned counsel for the petitioner that earlier, complainant reported the matter to the police on May 19, 2013 that his father is died due to electrocution. There was no reflection of any fact with regard to commission of theft of any licensed revolver. But after about more than two months i.e. on July 25, 2013, a fresh complaint was lodged by complainant alleging that some unknown persons have taken away the licensed revolver of his father by committing his murder. As per the case of prosecution, during investigation, petitioner was arrested in this case and when he was subjected to custodial interrogation he suffered disclosure statement. In pursuance of which, he got recovered a pistol and six empty cartridges from the pre-disclosed place.

But it is proved on record that Mukesh, an independent witness before whom

petitioner is alleged to have suffered disclosure statement and got effected the recovery while deposing as PW-4 has specifically stated that neither petitioner was subjected to custodial interrogation in his presence nor he got recovered the pistol and six empty cartridges. In fact, he has been declared hostile. As far as the complainant is concerned, he has categorically stated in his examination-in-chief that pistol and six empty cartridges were lying near the dead body of Ombir at the spot. Thus, the question of recovery of pistol or empty cartridges does not arise at all at the instance of petitioner. Moreover, petitioner is in custody since February 26, 2014. The complainant and recovery witness have already been declared hostile as they did not support the case of prosecution. Thus, no useful purpose would be served by keeping the petitioner behind the bars. He also undertakes to abide by all the terms and conditions as imposed by this Court in case he is granted the concession of bail.

5. On the other hand, learned State counsel has strongly opposed the submissions made by learned counsel for the petitioner and has submitted that petitioner is a habitual offender, due to which no body has come forward to depose against him. Though in another case registered against him under Sections 307, 148 and 149 IPC he has already been acquitted. But in one another case registered under Section 302 IPC against him, he is facing trial. He, accordingly, prayed for dismissal of petition.

6. A deep thought has been given to the submissions made by learned counsel for the parties and have perused the record available on file.

7. No doubt, it was a blind murder and FIR was registered against unknown person but during investigation of this case, petitioner was arrested and when he subjected to custodial interrogation he suffered disclosure statement that

he has kept concealed a pistol and six empty cartridges used in the commission of offence which are exclusively in his knowledge and could get the same recovered. In pursuance of his disclosure statement he got recovered pistol as well as six empty cartridges. No doubt, recovery witness of pistol and empty cartridges namely Mukesh did not support the case of prosecution and has been declared hostile but it is not going to affect much the case of prosecution at this stage especially, in the circumstances that pistol as well as empty cartridges were sent to FSL. It has been reported by FSL that the shots were fired from the pistol recovered at the instance of accused. Not only this driving licence of the deceased was also recovered from the accused. It would also not be out of place to mention here that complainant also did not support the case of prosecution and has tried to say that pistol and empty cartridges were lying at the spot when the proceedings under Section 174 Cr.P.C. were carried out. But his version stands falsified from the fact that recovery of pistol and six empty cartridges was effected in pursuance of disclosure statement of petitioner. Recovery of weapon *prima-facie* establishes the *criminis particeps* of petitioner.

8. Thus, this Court does not find any merit in the instant petition, as such the same is dismissed.

AUGUST 25, 2015
SHAM

(JASPAL SINGH)
JUDGE