IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-22856 of 2016
Date of Decision: July 25, 2016

HC Vijay and another ...Petitioners

Versus

State of Haryana ...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. J.S. Bedi, Senior Advocate
with Mr. Dinesh Sahu, Advocate
for the petitioners.

Mr. Deepak Sabherwal, Addl. A.G. Haryana.

FATEH DEEP SINGH, J.

The present petitioners HC Vijay and HC Partap Singh have invoked the jurisdiction of this Court seeking anticipatory bail under Section 438 Cr.P.C. The facts as detailed by the two sides are that one Ram Lal and his servant Krishan both residents of Delhi were alleged to have been kidnapped by one Raj Kumar and Jyoti on 7.7.2014. The servant was released to bring the ransom money from the brother of Ram Lal. On this information an FIR bearing No.401 dated 7.7.2014 under Sections 364-A, 342, 34 IPC was registered at Police Station Chhawala, Delhi and Police

Aarti Sharma
2016.08.03 11:46
I attest to the accuracy and
authenticity of this document

team from three Police Stations Chhawala, Najafgarh and Dwarka (North) comprising of 16 officials was constituted for the release of kidnapped persons. It was during the tracing of the call that was sought to be made by the kidnappers Raj Kumar and Jyoti, Police swooped at a place in Rohtak to apprehend the culprits and which also included Krishan Tyagi brother of Ram Lal and three other persons namely Narain Dev, Naresh and Vishal and as a consequence of which kidnappers freed Ram Lal at Adarsh Nagar Rohtak while taking away ₹50,000/- from his person along with a gold chain and his Ertiga car. When police party happened to accost the car in which the accused Raj Kumar and Jyoti were travelling they fired at the Police party and in the cross-firing Raj Kumar died, whereas, Jyoti received injuries. From the dead body of Raj Kumar ₹21,000/-, a gold chain belonging to Ram Lal were recovered along with car make Ertiga Maruti regarding which encounter FIR No.325 dated 7.7.2014 under Sections 307, 353,186, 34 IPC read with Section 25 of the Arms Act of the Arms Act was registered at Police Station, Civil Line Rohtak on the statement of Veer Singh from Delhi Police. Statement under Section 164 Cr.P.C. of Ram Lal was also recorded before the Magistrate.

By another quirk of fate Satbir Singh father of deceased Raj Kumar, a retired ASI of Delhi Police filed CRM-M-32590 of 2014 for holding of an enquiry by CBI, wherein, it was alleged that his son had been killed in a fake encounter. The matter was reinvestigated, wherein, the father of the deceased got recorded statement of Ram Mehar and Rajender being witnesses to this fake encounter so claimed by the father of the deceased including that of Rohit wherein the version of the Police of

Aarti Sharma
2016.08.03 11:46
I attest to the accuracy and
authenticity of this document

encounter by virtue of cross-firing was refuted and it is thereafter, a report under Section 173(2) Cr.P.C. filed against the petitioners and that is how the petitioners have come before this Court seeking this relief.

The learned State counsel has sought to oppose the grant of bail on the grounds that since it was a case of custodial interrogation the petitioners are not entitled to any relief in view of the seriousness of the allegations. On behalf of the petitioners their counsel has sought to bring forth the report of the police dated 5.2.2016 to hammer home the point that nothing is to be recovered from them and that alleged weapon being a property of the State is already with the Police and that it was a case of an encounter in pursuance of kidnapping of a business man and has placed reliance on ***2003 (4) RCR (Criminal) 716 Bharat Chaudhary and another vs. State of Bihar and another; 2010 (1) SCC 684 Ravindra Saxena vs. State of Rajasthan; 2010(2) RCR (Criminal) 317 Sajjan Kumar vs. The State (Through CBI); 2006(2) RCR (Criminal)389 Sankaran Moitra vs. Sadhna Das and another; 2012(4) RCR (Criminal) 662 Om Parkash and others vs. State of Jharkhand through the Secretary, Department Home, Ranchi-1 and another; 2015(2) RCR (Criminal) 1001***. Evidently, it was as a sequel to the kidnapping of Ram Lal by Raj Kumar and Jyoti the Police had swung into an action and it was during the course of tracing the abductors and the abductee the police came across the abductors in Rohtak from where the abductee was got released. Whether it was a State managed or a real encounter are matters of evidence being a debatable issue. Since the nothing is to be recovered form the petitioners and it was at the behest of the Police the initial FIR was got registered against the deceased/accused are matters which weigh heavily in

Aarti Sharma
2016.08.03 11:46
I attest to the accuracy and
authenticity of this document

the mind of the Court. Though, the offences are certainly of serious in nature, however, custodial interrogation of the petitioners are not required and admittedly even by the State the petitioners were members of the raiding Police party and there has been certainly exchange of fire shots. In the light of the same sending the petitioners to custody would be travesty of justice and culpability, if any, shall be determinable at the time of trial, thus, in view of same the present application is allowed. In the event of arrest of the petitioners they be admitted to bail to the satisfaction of the arresting officer/Investigating Officer and that they shall abide by the conditions as envisaged under Section 438(2) Cr.P.C.

(FATEH DEEP SINGH)
JUDGE

July 25, 2016
aarti

Aarti Sharma
2016.08.03 11:46
I attest to the accuracy and
authenticity of this document