

CRM-M-33533-2015

Date of Decision : 26.04.2016

Shamsu

.....Petitioner

versus

State of Haryana

....Respondent

CORAM : HON'BLE MR. JUSTICE M.M.S. BEDI**Present:** Mr. Sarfaraj Hussain, Advocate
for the petitioner.

Mr. Vikas Malik, DAG, Haryana.

M.M.S. BEDI, JUDGE (ORAL)

The petitioner seeks the concession of pre-arrest bail in a case registered at the instance of Sumeet a member of Cow Protection Society alleging that 6-7 persons were found loading cows in a TATA truck. When the complainant along with 2-3 others tried to stop the truck carrying cows for slaughtering, the accused persons tried to crush the complainant party and also fired shots at the complainant party and fled away from the spot. The petitioner is not named in the FIR.

On the last date of hearing, counsel for the petitioner was directed to make available a copy of the challan. The allegation against the petitioner is that he is responsible for homicide of his accomplice, whom he shot while firing at the police party, which intercepted the petitioner and others. A perusal of the report under Section 173 (2) Cr.P.C. indicates that a country made pistol along with two live cartridges of .315 bore along with some cartridges of 8 mm have been recovered from the petitioner.

The petitioner has been involved in the case on the basis of

disclosure statement made in case FIR No. 15 dated 25.01.2015. The petitioner has been arrested in the blind FIR of year 2013 in 2015.

A perusal of the report under Section 173 (2) Cr.P.C. reflects that there are large number of contradictions in the medical and ocular version on the basis of recoveries of weapons recovered during the course of investigation. The petitioner claims that he has been falsely implicated whereas the deceased had been killed by police officials by firing from official fire arm of 9 mm bore.

The petitioner has been in custody with effect from 31.01.2015 and in a case where there is no independent witness. The chances of tampering with the evidence are absolutely remote as most of the witnesses appear to be official witnesses. It will be debatable whether on the basis of the confessional statement made by the petitioner in another case in custody, the petitioner could be convicted.

Without expression of any opinion on merits, the petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the trial Court.

(M.M.S. BEDI)
JUDGE

26.04.2016
Neha