

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-44281-2017

Date of Decision: 02.02.2018

Pirithi Ram

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sant Pal Singh Sidhu, Advocate,
for the petitioner.

Mr. Bhupender Beniwal, A.A.G., Punjab.

Mr. A. S. Manaise, Advocate,
for the complainant.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner, Pirithi Ram, is seeking the concession of anticipatory bail, he having been arraigned as an accused in DDR no.24 registered on 18.08.2017 at Police Station City-2, Abohar, District Fazilka, for the alleged commission of offences punishable under Sections 302/307/120-B IPC and Section 25/27 of the Arms Act, 1959.

The aforesaid report is a cross version to FIR no.91 registered on the same date and at the same police station, alleging therein the commission of offences punishable under Sections 307/324/323/506/148/149 IPC. In the case of a co-accused of the petitioner, i.e. one Vijay, who had also filed a petition (CRM-M-43285 of 2017) seeking anticipatory bail, after issuing notice, while granting anticipatory bail to that petitioner, the following order

had been passed by this Court on 17.01.2018:-

“Learned counsel for the petitioner submits that even the video recording from the CCTV camera installed in the mall where the co-accused of the present petitioner (i.e. Vishu Kamboj) has a shop, shows that it was the said co-accused alone being attacked by several persons with baseball bats etc., and in self-defence he fired shots from his licensed revolver, one of which hit the thigh of one of the attackers and the other in the abdomen.

The petitioner is not seen anywhere even in the CCTV footage and has been simply implicated by the police as a conspirator in the death of two persons in the occurrence, due to gun shots wound received.

Learned counsel for the State, on specific query after having been asked on the last date of hearing to assist the Court by looking at the video recording, could not deny that as per the video recording at least, the petitioner is not seen in the recording and it is only Vishu Kamboj who is seen in the CCTV footage, being attacked by 4-5 persons and him shooting from his licensed arm.

However, he further submits that the petitioner is connected in the occurrence in view of the fact that immediately prior thereto, phone calls have been exchanged between a co-accused of the present petitioner Vijay, i.e. Prithi Ram, from 6:12 p.m. onwards with Vishu Kamboj, which calls as per the investigating agency, were in furtherance of a conspiracy hatched to call the complainant side to the shop of the aforesaid Vishu Kamboj to compromise the matter, but upon them reaching there, Vishu Kamboj opened fired at them killing two of them, after which the attack took place on Vishu Kamboj, which has been captured in the CCTV.

On query to learned State counsel as to whether the present petitioner, i.e. Vijay, exchanged any phone calls with the aforesaid Vishu Kamboj immediately prior to the occurrence, he

submits that the phone call exchanged with the petitioner is a few days prior to the occurrence.

That being so, in the aforesaid circumstances, with the petitioner neither shown to be on the spot, nor having exchanged any phone calls with the aforesaid Vishu Kamboj, who in any case is stated to be alone at the time of occurrence, at least in the video recording, the petition is allowed and upon the petitioner joining investigation, in case he is sought to be arrested, he would be released on bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Ilaqa Magistrate. He shall, further, abide by all the conditions stipulated in Section 438 (2) Cr.P.C.”

On query to learned State counsel and to the learned counsel for the complainant, they both submitted that as a matter of fact, it was the aforementioned Vishu Kamboj who had called the complainant side (complainants in the cross-version) to his shop, in order to settle the dispute already existing between them, arising out of an FIR filed 3 to 4 days earlier. Then, upon the complainant side having gone to the shop of Vishu Kamboj, it is alleged that Vishu opened fire at them, thereafter being counter attacked by those who had come to the shop at his asking, upon which Vishu Kamboj entered a shopping mall in the immediate vicinity and continued firing back, leading to the death of two persons with other two persons injured.

Mr. Beniwal, learned AAG, and Mr. Manaise, learned counsel for the complainant, further submit that in the case of the present petitioner, even a perusal of the call details exchanged between him and Vishu Kamboj shows that there was a telephonic conversation between them immediately before and after the occurrence which is stated to have taken place at 6.40 p.m. on 17.08.2017.

Mr. Sidhu, learned counsel for the petitioner, does not dispute the above said fact and in fact has produced in Court the call details exchanged between the petitioner and the aforesaid Vishu Kamboj from 14.08.2017 to 17.08.2017. As per the said chart, there were 06 phone calls exchanged between the said parties between those dates, the last three being at 06:26 p.m., 06:31 p.m. and 07:00 p.m. on 17.08.2017 itself, i.e. the date of occurrence. He further submits that simply because of telephone calls exchanged between Vishu Kamboj and Pirthi Ram, that does not show that it was in fact the petitioner and his co-accused who were the aggressor party.

Having considered the arguments of both sides, it is to be noticed that though there is no video recording or photographs of the occurrence immediately outside the shopping mall, to substantiate or negate the version of the complainant in the 'cross case' (in which the petitioner is an accused), a perusal of the video recording inside the shopping mall and the photographs annexed by the petitioner in the other petition, i.e. CRM-M-43285 of 2017, shows that Vishu Kamboj was seen to be “under attack” inside the mall by four persons who were coming into the mall, as admitted by counsel on either side (as regards the numbers of persons and the *prima facie* opinion that can be drawn from a perusal of the CCTV/video recording.

That being so, and the petitioner not being on the spot at all, whether or not a conspiracy was hatched, in which four people allegedly came to the shop of Vishu Kamboj on being called there pursuant to such conspiracy, and thereafter Kamboj having fired at them from his revolver (as per the version of the complainant against the petitioner), would be a matter of evidence to be seen by the investigating agency and the competent Court at the appropriate stage.

However, in the aforesaid circumstances, when the petitioner was not seen at the spot at the time of occurrence, and his co-accused, as per the video recording inside the mall, having been shown to be alone, I see no reason to deny the petitioner anticipatory bail.

It needs to be stated here that the observation of this Court with regard to what is seen on the CCTV/video recording annexed with the petition is not to be taken to be an observation of such video recording being admissible or not in evidence eventually. However, at a stage of grant of anticipatory bail, *prima facie* opinion is drawn by the Court with regard to whether or not an accused deserves the concession; and in the opinion of this Court, that concession needs to be extended to the petitioner in the aforesaid circumstances.

Consequently, this petition is allowed and the petitioner upon joining investigation and complying with all conditions stipulated under Section 438 (2) Cr.P.C., if he is sought to be arrested, would be released on bail, on his furnishing adequate bail and surety bonds to the satisfaction of the Arresting Officer/Illaq Magistrate.

Disposed of.

February 02, 2018

Divyanshi/dinesh

**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No.