

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-9968 of 2018 (O&M)

Date of decision: March 28, 2018

Rameshwar Dass @ Rameshwar Dayal

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Bipan Ghai, Senior Advocate with
Mr. M.M. Pandey, Advocate for the petitioner.

Mr. Randhir Singh, Addl. AG Haryana.

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

A.B. CHAUDHARI, J (Oral)

This is the second petition for grant of regular bail filed by the petitioner-Rameshwar Dass @ Rameshwar Dayal, in FIR No.90 dated 23.06.2017, under Sections 323, 324, 302, 307, 34 of Indian Penal Code, 1860 (for short 'IPC') (petitioner challaned under Sections 323, 298, 341 IPC and Section 145 of Railways Act, 1989 (for short 'Railways Act'), registered at P.S. GRP Faridabad (District GRP Ambala Cantt.), Haryana, now charged for offence under Sections 298, 323, 324, 341, 307, 302 read with Section 34 IPC & Section 145 of Railways Act.

In the earlier round, the petitioner had filed the petition, i.e. CRM-M-37007 of 2017, for grant of regular bail, which was decided on 06.10.2017 and this Court had made the following order:-

“Heard learned counsel for the rival parties, including the complainant.

The prosecution case as put up by the prosecution is regarding the quarrel between the boys that took place over seat sharing in the train when murder took place in the

train. The incident was published enormously. The prosecution allegations are such that in my opinion there is every likelihood of prosecution witnesses being put in jeopardy. In that view of the matter, I think the trial Court ought to have fixed the Sessions trial itself for trial so that the evidence is recorded untampered. In that view of the matter, I make the following order:

ORDER

- (i) Prayer for bail is not considered for the time being and the petition is disposed of with liberty to apply for regular bail again after a period of five months.*
- (ii) In the meanwhile, the trial Court shall frame charge on 10.10.2017 and shall immediately prepare a schedule for conducting the Sessions trial if possible on day to day basis and complete the same within five months.*
- (iii) CRL. MISC. No.M-37007 OF 2017 is disposed of with the observations as aforesaid.*

6TH OCTOBER, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE"

In view of the Supreme Court's judgment in the case of **Shahzad Hasan Khan versus Ishtiaq Hasan Khan and another**, 1987 SCC (Criminal) 415 and **Jagmohan Bahl and another versus State (NCT of Delhi) and another**, 2015(1) RCR (Criminal) 291, the second bail petition for regular bail has been placed before me for consideration.

As per the FIR, the prosecution allegations are that Hasim son of Jalaludin of village Khandawali, PS Sadar Ballabhgarh, District Faridabad lodged FIR with the police station and stated therein that in the morning of 22.06.2017, he together with Mausim, Moin and his real brother Juned had gone to Sadar Bazar, Delhi for purchasing articles for

Eid. After making purchase, they boarded the train from Delhi at 5:30 P.M. They were playing *Ludo* on their seats. About 15/20 passengers nearby told them to get aside and started pushing them to which he and his brothers objected. Out of them, two passengers started misbehaving with them and abused by saying on their community like *mulla* and therefore, there were heated arguments. He gave seat to an aged person. However, 2/3 boys started abusing them. They started grappling with them. He and Mausim therefore, informed their respective brothers on phone and after that about 5-6 boys from their village came to Ballabgarh Railway Station to receive them. When train stopped and they were in the process of getting down from the train, 2-3 boys started abusing and grappling with them and all other passengers in the coach started shouting and did not permit them to get down. He and his brother objected to it and in the meanwhile train started. Then Mujahid, Mausim @ Chuna and his elder brother Shakir came to receive them. They boarded the coach and when they raised protest then two boys started giving them abuses in the name of mother and sister and uttered caste related words. They started beating them. One young boy attacked them forcefully with knife and first of all he gave knife blow to Shakir on his neck, chest and hand. His brother Juned tried to intervene then that boy gave many knife blows to Juned and injured him seriously. When he tried to intervene, he also gave him two knife blows. There was hue and cry and thereafter, they got down from the train and taken his injured brother to Civil Hospital, Palwal and FIR was lodged.

On behalf of the complainant, Mr. A.S. Cheema, Advocate

appeared in the present matter who was allowed to file documents, which were taken on record, during hearing.

Learned Senior counsel for the petitioner submitted that the age of the petitioner is 52 years and all that description in the FIR about the persons making *ruckus* and assault relates to the boys and not to any elderly person like the petitioner. He then submitted that bail is claimed by way of parity also because the other accused persons have been released on regular bail by the trial Court observing that there was no allegation against those accused persons about any overt act on their part in making assault and the only allegation about them was of hurting religious sentiments and causing simple injuries and charged for the offences under Sections 298, 323 and 341 IPC and Section 145 of Railways Act. He submitted that there is no allegation in the FIR itself or in the investigation that the present petitioner had given any abuses in the name of caste or community nor there is any allegation that he had made any assault on anybody. On the contrary, there is a reference everywhere about the boys doing it. According to the prosecution, it was one Naresh who gave the knife blow due to which the deceased Juned suffered serious injuries and others also suffered some injuries because of knife blows. However, even remotely, there is no attribution to the present petitioner. Learned Senior counsel took me through the orders granting bail made by the trial Court in respect of the co-accused Chander Parkash, Gourav Sharma, Pradeep Kumar and Ramesh, which orders show that certain conditions were imposed by the trial Court. Learned Senior counsel then invited my attention to the police statement

of Yudhishter son of Kirori Mal and Mahender son of Rajender and submitted that they also do not attribute any overt act on the part of the petitioner. Learned Senior counsel finally submitted that there is thus, no *prima facie* evidence of commission of any offence of murder and commission of offence under Section 307 of IPC or any such offence for which the petitioner could be denied the benefit of grant of regular bail. He further submitted that the trial has been stayed by the Apex Court and therefore, the order made by this Court for expeditious trial, earlier, cannot operate.

Learned State counsel as well as learned counsel for the complainant vehemently opposed the present petition for grant of bail to the petitioner and prayed for dismissal thereof, on the ground that it was the petitioner who was the principal offender and therefore, there is every likelihood of tampering with the prosecution evidence. According to Mr. Cheema, learned counsel for the complainant, the persons numbering 100-150 from other villages have been pressurizing the witnesses and if the petitioner is allowed to come out of jail, there is every likelihood of prosecution evidence being tampered with. In addition, he submitted that the present complainant had filed the petition in this Court for holding the CBI inquiry as the complainant-Jalaludin has a grievance that the investigation was not correctly and properly made and deliberately, the State police had kept lacuna in the investigation. According to him, a single Judge of this Court dismissed the petition filed by the complainant-Jalaludin and the Letters Patent Appeal was also dismissed as not maintainable. Complainant-Jalaludin

has now approached the Apex Court and the Apex Court has entertained the Special Leave Petition, in which the stay of trial has been granted, which continues. He further submitted that there is every likelihood of conduct of further investigation by the CBI in the present case and in that event, there is likelihood of collection of further incriminating evidence against the present petitioner. Even otherwise, whatever evidence is available today, the same is enough to reject the plea for regular bail. He submitted that the instant incident had created communal disharmony amongst Muslims, Hindus and in the circumstances, it would not be appropriate to grant regular bail to the petitioner. Learned counsel for the complainant has placed before me the statements of witnesses which were recorded so also the disclosure-statement of the accused persons including the one of the petitioner. He therefore, prayed for dismissal of the petition for grant of regular bail. He also referred to the disclosure-statement of the petitioner. The State has filed replies which are taken on record and I have gone through the same.

CONSIDERATION

At the outset, this Court makes it clear that the plea for regular bail made by the petitioner is being considered on the basis of materials on record and not being influenced by any consideration regarding social disharmony etc. for which separate laws and remedies are available, which a citizen would be entitled to adopt.

It is not in dispute that this Court had made an order on 06.10.2017 in which this Court expressed that such cases should be tried expeditiously. That is why the plea for bail made by the present

petitioner was declined by this Court. Not only that, this Court gave specific directions for framing charge and prepare a schedule for conducting the trial on day to day basis and to complete it within five months. However, circumstances are such that the said order now cannot be complied with.

It appears that in the meanwhile, the complainant-Jalaludin filed a petition, i.e. CWP No.24104 of 2017, in this Court, which was decided on 27.11.2017. This Court did not entertain the plea for CBI inquiry. Now, the matter is pending before the Apex Court and there is stay of trial. It is in the above background, this Court will have to examine and balance the interest of parties upon the examination of the evidence that is available today as on date.

The trial Court while framing charge qua the present petitioner recorded the following finding:-

“8. So far as accused Rameshwar is concerned, he was accompanying main accused Naresh from the very beginning and had abused the victims in the name of their religion and they also did not allow the victim to alight from the train and when the quarrel ensued, accused Naresh caused injuries with sharp edged weapon. As such, it will be a matter of evidence whether accused Rameshwar shared common intention with accused Naresh or not. It is well settled that at the stage of framing of charge, it is only to be seen whether a prima facie case exists to proceed against the accused or not. Standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the time of framing of charge and at this stage the court is required to see only whether there are sufficient

grounds for presuming that the accused has committed the offence.”

The trial Court while rejecting the application for grant of bail filed by the petitioner recorded the following reasons in respect of the present petitioner:-

“6. As per version in FIR, few persons including Rameshwar (applicant) and Naresh (main accused) boarded the train at Okhla, Railway Station, Delhi. Victim Juned and his family members/friends were already travelling in the said train and were sitting on their seats. They asked them to vacate the seat on which a quarrel ensued and they abused the victims in the name of their religion. However, victim party tried to alight from the train at Faridabad Station but could not come down due to rush. However, as per reply furnished by the police, deceased Juned and his friends had alighted from the train at Tuglakabad, Railway Station after the quarrel and this fact has been verified during the investigation. Thereafter, they telephonically informed their family members, who reached Ballabgarh, Railway Station. Family members of victim namely Shakir, Mustkin and Mausim came at Ballabgarh Railway Station and victims Juned, Mausim and Moin again boarded the same coach at Ballabgarh Railway Station alongwith them. A fresh quarrel started at Ballabgarh Railway Station in which petitioner again abused them and hurt their religious sentiments and did not allow them to alight from the train and knife blows were caused by main accused Naresh. As such, applicant was involved in the quarrel with the victims from the very beginning. It will be seen during the trial whether Section 34 IPC is attracted against the applicant or not as he as well as main accused namely Naresh were travelling together from Okhla Railway Station itself. The allegations against the

applicant are serious in nature. Whether applicant had caused any injury during the quarrel will be seen during the trial and taking into consideration the seriousness of offence, the applicant in my opinion does not deserve concession of bail.”

For consideration of the arguments regarding parity made by the learned Senior counsel for the petitioner in respect of the regular bail granted to other accused persons, the trial Court recorded the following reasons vide order dated 02.08.2017 while granting bail to other accused-Gourav Sharma:-

“.....The only allegations against the applicant are of hurting of religious sentiments and causing simple injuries and the offence under Sections 298, 323 and 341 IPC and 145 of Railway Act for which the applicant is being charged by the police are bailable. Applicant is in custody since 28.6.2017. Investigation and trial will take sufficiently long time to conclude. Nothing is to be recovered from his possession and further detention of the applicant is thus not required. Similarly situated co-accused namely Chander Parkash has already been released on bail vide order dated 27.7.2017 and as such, applicant too is entitled to be released on bail on the ground of parity.....”

Perusal of the above reasons and the reasons for rejection of petition for bail shows that the only distinction drawn by the trial Court is that those boys, whom regular bail were granted, had boarded the train later after the incident commenced. However, the petitioner had boarded the train in the beginning. I do not think, the distinction drawn by trial Court is apt. On the contrary, it is seen that the assault was never made in the beginning, but the same was made when the other boys entered the

train. The initial dispute between the parties was only regarding the seat sharing and abuses in the name of castes and nothing more. I am therefore, convinced having looked at the statement of Yudhister, Mahender and FIR and even the disclosure statement of the present petitioner that except attributing him the abuses in the name of castes or giving slaps in the first round, it cannot be said that there was any allegation about the petitioner asking Naresh or any other boy to assault the other group including the deceased. There is no even remote whisper that the petitioner had instigated or asked anybody to make assault.

In this context, learned counsel for the complainant submitted that it happened because of faulty investigation made by the State police and therefore, this Court should not grant bail because CBI will collect evidences against the petitioner.

It is difficult to accept the submission made by the learned counsel for the complainant as this Court is required to consider the evidence, i.e. placed before it and not evidence which would be collected in the future.

The upshot of the above discussion is that the petitioner has made out a *prima facie* case based on the evidence that was collected by the police for his release on bail particularly because, he does not have any criminal antecedents. The incident seems to have taken place over the issue of seats sharing etc. in the train and there is neither any evidence of any preplanning to cause incident deliberately or intentionally or to create disharmony. The petitioner is also entitled to grant bail on the ground of parity as discussed by me above.

The apprehension expressed by the learned counsel for the complainant that there is every likelihood of tampering of the evidence, if the petitioner is released on bail, also, will have to taken care of by this Court. In that view of the matter, learned Senior counsel for the petitioner was specifically told that petitioner shall not enter the village where the complainant and the witnesses reside and rather not to enter the District of Faridabad, till the trial is completed and also to attend the police station where he would reside outside the District of Faridabad and also ask the police to keep surveillance on him. It is also necessary to ask the police to extend police protection to the complainant and other witnesses, if not already provided. Be that as it may. As a sequel, I make the following order:-

ORDER

- (i) CRM-M-9968 of 2018 is allowed;
- (ii) Petitioner-Rameshwar Dass @ Rameshwar Dayal is ordered to be released on bail to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned;
- (iii) The petitioner shall not enter the District of Faridabad including the village where the complainant and other witnesses reside, till the trial is completed;
- (iv) The petitioner shall report to the police station within whose jurisdiction his residence, outside district Faridabad, would fall, on Saturday between 11:00 A.M. to 04:00 P.M. every week and the police shall keep surveillance on him;
- (v) The concerned Superintendent of Police, Faridabad shall extend police protection to the witnesses and the complainant, if not already provided;
- (vi) The petitioner shall deposit his passport, if he possesses, with the trial Court;

(vi) The petitioner shall not tamper, influence and threaten the prosecution witnesses and complainant as well.

(A.B. CHAUDHARI)
JUDGE

March 28, 2018
mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**