

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

CRM-M No.48145 of 2018

Date of Decision: 15.03.2019

Deepak Bhardwaj

....Petitioner

Versus

State of Punjab

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Preetinder S. Ahluwalia, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. D.A.G., Punjab.

Mr. Sanjiv K. Virk, Advocate
for the complainant.

DAYA CHAUDHARY, J.

Petitioner-Deepak Bhardwaj has filed the present petition under Section 439 Cr.P.C for grant of regular bail to him in case FIR No.77 dated 14.04.2018 registered under Sections 302, 307, 392, 323, 148, 149, 353, 186, 283, 295, 188, 160, 427 IPC and Sections 25/27 of the Arms Act and Sections 3(1)(t), 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3 of Prevention of Damage to Property Act, 2014, 8-A and 8-B of the National Highway Act, 1956 (however, during investigation, Sections 8-A and 8-B have been deleted).

Learned counsel for the petitioner submits that the said FIR was registered against 33 persons along with 100/150 unknown persons. As per allegations levelled in the FIR, the followers of Ambedkar had installed

Baba Sahib's Board on public land at Paper Chowk, Phagwara and changed the name from Paper Chowk to Savidhan Chowk. It has also been mentioned in the FIR that the followers of Shiv Sena were also gathered with deadly weapons and raised provocative and anti-religious slogans. Learned counsel also submits that during course of investigation, one of the injured, namely, Yashwant Kumar died on 29.04.2018 and thereupon, statement of injured Kulwinder Singh was recorded, wherein, it was stated that the death of Yashwant Kumar was on account of firing by four persons, namely, Deepak Bhardwaj (the present petitioner), Rajiv Chahal, Inderjit Karwal and Shivi Batta. The matter was investigated and three different challans were presented. The first challan was presented for the offence punishable under Sections 353, 186, 283, 188, 160, 148, 149 of the Indian Penal Code and Section 3 of the Prevention of Damage to Property Act. The second challan was presented against the present petitioner under Sections 302, 307, 323, 148, 149 of the Indian Penal Code and Sections 25/27/54/59 of the Arms Act and Sections 3(1)(t), 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In the second challan, Kulwinder Kumar was cited as complainant. Said challan was presented against the persons, who were alleged to be the members of Shiv Sena. The third challan was presented under Sections 323, 148 and 149 of the Indian Penal Code against the members of Ambedkar Sena. In the said challan, co-accused of the petitioner, namely, Jimmy Karwal was the complainant.

Learned counsel for the petitioner submits that it was a case of version and cross version and it cannot be said at this stage as to which party was more aggressive. The opposite party i.e Ambedkar Sena had

already been granted bail. The bail petition filed by the petitioner has been dismissed only on the ground that he was involved in the commission of murder of Yashwant Kumar. Learned counsel also submits that deceased Yashwant Kumar died on account of gun shots being fired on him by four persons, namely, Inderjit Karwal, Deepak Bhardwaj (the present petitioner), Rajiv Chahal and Shivi Batta. There is no specific allegation as to whether shots fired either hit the deceased or the injured. It is also the argument of learned counsel for the petitioner that after arrest, the recovery of .22 bore revolver having number 085100823 was effected from the petitioner. The recovery from the other accused was of .32 inch revolver. The weapon recovered from the petitioner as well as other accused was sent for comparison to Forensic Science Laboratory, SAS Nagar, Mohali. The fire arm weapons alleged to have been recovered from the petitioner and other co-accused were also sent along with lead bullet, which have been recovered from the body of the deceased as well as from the body of the injured. In the FSL report, it has been opined that no conclusive opinion can be given. Thereafter again, it was sent for re-comparison and the same report has been received. At the end, learned counsel for the petitioner submits that the petitioner is in custody since 15.04.2018 and no definite opinion has been given by the Central Forensic Science Laboratory regarding linkage of the fired deformed lead bullets marked as "CB/1", "CB/2". On test firing, the cartridges were found to be live and the .32" revolvers were found to be in working condition.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and submits that the petitioner was specifically named by mother of the deceased in her statement recorded on

26.06.2018, wherein, it was stated that at the time of incident Inderjit Karwal, Deepak Bhardwaj, Shivi Batta and Rajiv @ Raju Chahal were armed with pistols, whereas, Jimmy Karwal, Sunny Batta, Sushil Kumar @ Tinka were armed with weapons like *dangs, sticks and swords* etc. Certain allegations were also there about the caste and stones as well as broken bottles were thrown upon them. Learned State counsel also submits that keeping in view the serious allegations against the petitioner; the less custody; even the complainant has not been examined and charges have not been framed, he does not deserve the concession of bail.

Heard the arguments of learned counsel for the parties and have also perused the contents of the FIR as well as other documents available on the file.

The facts relating to filing of three challans have not been disputed. It is also not disputed that two groups of persons were there from both sides. It was a free fight and nothing can be said as to which of the party was more aggressive. Even it is not ascertained/determined as to from which weapon, the shot was fired which hit the deceased-Yashwant @ Bobby. The injury caused to the deceased from the licenced weapon of the petitioner cannot be there in view of report of Central Forensic Science Laboratory. The relevant opinion given by the Central Forensic Science Laboratory is reproduced as under :-

“i. Two .32” S&WL revolver cartridges were test fired through each of the .32” revolvers marked “A/1”, “A/2”, “A/3” and “A/4”. On test firing, the .32” revolvers were found to be in working condition.

ii. It could not be possible to form any definite opinion regarding linkage of the fired deformed lead bullets marked “CB/1”, “CB/2” and the irregular lead piece (received in

*case No.CFSL (C)/2348/BA/111/2018 dated 20.11.2018)
with respect to the .32” revolvers marked “A/1”, “A/2”,
“A/3” and “A/4” due to lack of sufficient individual
characteristic marks present on them”*

On perusal of said opinion, it is clear that it cannot be possible to form any definite opinion regarding linkage of the fired deformed lead bullets. The cartridges were found to be live and .32” revolvers were found to be in working condition.

From the opinion given by Dr. Sandeep Singh Sahota, Scientific Officer (Ballistics), Forensic Science Laboratory, Punjab, Phase-4, Mohali, it is apparent that no definite opinion could be given with respect to two deformed and badly damaged lead bullets marked CB/1 and CB/2 respectively. It is also opined that no definite opinion could be offered as to whether these had been fired or not through any one of the revolvers marked W/2, W/3 and W/4 respectively.

As per allegations, the petitioner and Shivi Batta fired shots from their revolvers which hit on the head of deceased Yashwant @ Bobby and one shot hit on his right waist, due to which, he fell down and was taken to the hospital, where, he died. Thereafter, the offence under Section 302 IPC was added. The petitioner cannot claim parity with co-accused, who have been released on regular bail.

By considering the stage of trial that even the charges have not been framed; the statement of the complainant has not been recorded; the custody is also less than one year; the role of the petitioner and seriousness of offence, no ground is made out to release him on regular bail at this stage.

The petition is accordingly dismissed.

However, the petitioner is at liberty to file petition for bail after recording the statement of injured and complainant.

15.03.2019
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No