

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-24355-2019

Date of decision: 03.07.2019

Naveen

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. R.S. Rai, Sr. Advocate with
Mr. Manish Soni, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.255 dated 09.06.2017 under Sections 302, 506, 34 IPC and Section 25 of Arms Act, registered at Police Station Pataudi, District Gurugram.

Learned senior counsel for the petitioner submits that as per allegations in the FIR, got registered by Manju wife of deceased Yogesh, on 08.06.2017, one Ravi, petitioner-Naveen, Vikas, Gaurav, Munna and Pardeep came at the spot and told that they will take revenge of murder of Rahul. Upon this, husband of the complainant started running on motorcycle and thereafter, he climbed the roof of one Om Parkash. Ravi and petitioner Naveen were having axes in their hands and Munna fired from country-made pistol and Pardeep and Vikas, while following the husband of the complainant, also climbed on the roof. The complainant also reached the roof, where she saw that

Pardeep and Vikas caught hold of her husband and Ravi and Naveen gave beatings to him with axes and Munna, by pointing the country-made pistol towards the complainant, threatened her that she will also be killed like this. Yogesh suffered injuries and died in the incident and the present FIR was registered.

During the investigation, the police arrested Ravi @ Jitender on 11.06.2017 and thereafter, he remained confined in judicial lockup. On 19.06.2017, petitioner-Naveen, Vikas, Gaurav and Mukesh @ Munna were arrested and during the interrogation, they recorded their separate disclosure statements and on the basis of same, a country-made pistol, two axes, motorcycle and their clothes were recovered. Later, on the basis of investigation carried out by Assistant Commissioner of Police, Pataudi, Gurugram and upon recording the statements of respectables of the village, who stated that at the time of incident, Ravi was present at his house, he was found innocent. Similarly, the police found that Pardeep was present in a restaurant on NH-8, Dharuhera and on the basis of CCTV footage, he was also declared innocent. The police, thereafter, submitted the report under Section 173 Cr.P.C. against petitioner-Naveen, Vikas, Gaurav and Mukesh @ Munna.

Learned senior counsel for the petitioner has referred to the disclosure statement of petitioner Naveen, wherein the police recorded that the petitioner was carrying a country-made pistol and Gaurav and Vikas were carrying one axe each. Learned senior counsel has referred to later part of this statement, wherein it is stated that Vikas gave an axe blow on the head of Yogesh and thereafter, they all caused injuries to him. It is further submitted that in pursuance to this disclosure statement, a country-made pistol was

recovered from the petitioner along with two live cartridges and the same were sent to the FSL, Madhuban. In the FSL report dated 09.03.2018, it is opined as under: -

“...The 7.65 mm fired cartridge case is without percussion cap. No other sufficient comparable individual characteristic marks were available on it. Therefore, no definite opinion could be formed regarding its linkage with respect to country-made pistol marked as W/1 due to lack of sufficient comparable individual characteristic marks...”

Learned senior counsel has thus argued that even the country-made pistol recovered from the petitioner was not connected with the fired cartridges recovered by the police and therefore, it will be a debatable issue whether the same was used in the commission of crime.

Learned senior counsel has further argued that the petitioner is in judicial custody for the last two years and statement of the complainant PW3 Manju has already been recorded, in which she has supported the version given in the FIR and she named both the accused persons namely Pardeep and Ravi, who were found innocent by the police, in her statement as PW3. Thereafter, an application under Section 319 Cr.P.C. was moved, which was allowed and Ravi and Pardeep are summoned as additional accused on 24.04.2018 and therefore, it will take more time in conclusion of the trial, as the trial will start *de novo* after appearance of the aforesaid two persons before the trial Court.

Learned senior counsel for the petitioner has next argued that though as per the FIR, the petitioner was shown carrying an axe, however, the same was not recovered from him and was recovered from the co-accused and only a country-made pistol was recovered from the petitioner, which according

to the FSL report, might not be used in the commission of offence.

In reply, learned State counsel has however argued that the complainant has appeared as PW3 and has supported the prosecution version and thereafter, two persons namely Ravi and Pardeep have been summoned by the trial Court vide order dated 24.04.2018, however, the said order is under challenge in CRR-2082-2018, which is pending. Similarly, co-accused Ravi @ Jitender has also filed CRR-2147-2018, challenging his summoning under Section 319 Cr.P.C. and the same is also pending.

Learned State counsel, on instructions from ASI Krishan Pal, has further submitted that though five PWs have already been examined, however, no further evidence is recorded, in view of summoning of two additional accused persons namely Ravi and Pardeep.

After hearing learned counsel for the parties, I deem it appropriate to release the petitioner on regular bail, for the following reasons: -

- (a) The petitioner is in judicial custody for the last two years; statement of the complainant PW3 Manju has already been recorded and there is no possibility of tempering with the prosecution evidence.
- (b) After the summoning of two additional accused under Section 319 Cr.P.C. on 24.04.2018 no further evidence is recorded, as they have challenged their summoning before this Court, thus, conclusion of the trial will take some time and in the event of dismissal of their revision petitions, the trial will *de novo* start, as both these additional accused will have a right to cross-examine the prosecution witnesses.

- (c) Considering the allegations in the FIR and the statement of PW3 Manju, wherein it is stated that the petitioner was armed with an axe, whereas as per the investigation, a country-made pistol was recovered from him, on his disclosure, which as per the FSL report, might not be used in the commission of crime and as per the injuries reported in the post-mortem report, there is variation in the two versions, which can be decided at the time of final decision of trial.

Without commenting anything on merits of the case, this petition is allowed and the petitioner is directed to be released on regular bail subject to the following conditions: -

- (i) *He will furnish the bail bonds with two sureties to the tune of Rs.2.00 lacs each.*
- (ii) *He will furnish an undertaking of his father/mother that the petitioner will not visit the place of residence/workplace of the complainant or her family members and in case he is found breaching this condition, he/she will be responsible for the same.*
- (iii) *In case of misuse of concession of regular bail, it will be open for the complainant or the prosecution to move an application for cancellation of bail.*
- (iv) *Any other condition, which the trial Court deem fit, may impose at the time of furnishing the bail/surety bonds.*

03.07.2019

vishnu

**[ARVIND SINGH SANGWAN]
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No