

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**1. CRM-M-561 of 2018
Date of decision: 11.12.2019**

Harbans Kaur and others

.. Petitioners

Versus

State of Punjab and another

.. Respondents

2. CRM-M-47644 of 2019

Hardeep Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Amandeep Singh, Advocate
for the petitioners in CRM-M-561-2018.

Mr. Monty Goyal, Advocate
for the petitioner in CRM-M-47644-2019.

Mr. Amitoj Singh Dhaliwal, DAG, Punjab

Mr. Manuj Nagrath, Advocate
for respondent no. 2-complainant.

SURINDER GUPTA, J.(Oral)

Heard.

Harbans Kaur, Sukhdev Singh and Jugraj Singh have filed CRM-M-561-2018 under Section 482 Code of Criminal Procedure (for short, 'Cr.P.C.') seeking quashing of order dated 18.09.2017 passed by Additional Sessions Judge, Ludhiana (Annexure P-3), whereby they were summoned as additional accused in case bearing FIR No.61 dated 30.04.2017, registered for offences punishable under Sections 302 read with Section 34 of Indian Penal Code (for short 'IPC'); 25 and 27 of the Arms Act, at Police Station Sadar Raikot, Ludhiana Rural, District Ludhiana

while CRM-M-47644-2019 has been filed by Hardeep Singh seeking regular bail in the aforesaid FIR.

Brief Facts:-

As per allegations in the FIR, the occurrence took place on 29.04.2017, when father of complainant, namely, Shingara Singh, had gone to fields on his tractor. He made a call to complainant that Hardeep Singh (petitioner in CRM-M-47644-2019) was talking to someone. She asked him to return home and proceeded towards fields alongwith her sister, Jaspreet Kaur. When they reached near graves outside the village, they found that their father had been surrounded by Hardeep Singh (CRM-M-47644-2019) and Harbans Kaur, Sukhdev Singh, Jugraj Singh (petitioners in CRM-M-561-2018). Harbans Kaur caught their father with arms. Hardeep Singh fired a shot at their father with his 12 bore rifle, which hit on his head. Then Sukhdev Singh took the rifle and fired shot, which hit below left ear and third shot fired by Jugraj Singh hit left side of chest of their father. Thereafter, Hardeep Singh started the tractor and hit nearby transformer. Complainant and her sister raised *rolla* and rushed towards their father, who died at the spot. Petitioners alongwith Hardeep Singh ran away from the spot.

The police presented challan against Hardeep Singh and kept the investigation against remaining accused pending. On commitment of case for trial to Court of Sessions, learned trial Court ordered summoning of petitioners on two grounds; firstly, allegations against them are serious and secondly, they have played active role in the occurrence. Relevant paragraph of the order of trial Court is reproduced as follows:-

“The committing court has only committed the case qua

Hardeep Singh and further as per state version enquiries are pending against the remaining accused. There are severe allegations against Jugraj Singh son of Sukhdev Singh, Sukhdev Singh son of Santa Singh, Harbans Kaur wife of Sukhdev Singh, caste Jat, residents of Kalsian, who have played active role in the occurrence. Let Jugraj Singh son of Sukhdev Singh, Sukhdev Singh son of Santa Singh, Harbans Kaur wife of Sukhdev Singh, caste Jat, residents of Kalsian be summoned as additional accused by way of non-bailable warrants for 11.09.2017.”

Learned counsel for petitioners in CRM-M-561-2018 submits that there was no material or evidence before the trial Court to summon the petitioners and no such evidence, which was collected during investigation and attached with the final report, was either looked into or discussed in the order passed by the trial Court. The trial Court appears to have been swayed by the allegations in the FIR, which were not corroborated by any evidence *qua* petitioners.

Learned State counsel assisted by learned counsel for the complainant submits that Court has ample power to disagree with the police report and summon the persons kept in column no. 2. Trial Court was competent to summon the accused as per provisions of Section 193 Cr.P.C. after the case has been committed to it.

So far as powers of Magistrate or the trial Court are concerned, these are not disputed. The trial Court is competent to summon any person as additional accused if it finds evidence making out a *prima facie* case against him. In this case, the investigation against petitioners was pending

and as per the investigation report (Annexure P-2), petitioners were found innocent.

The question, which arises for consideration in CRM-M-561-2018, is as to whether the trial Court has looked into any incriminating evidence against petitioners before passing order dated 18.09.2017 or waited for the police report when the investigation was still pending. The trial Court instead of waiting for the report of investigation, proceeded to summon the petitioners without looking into the evidence collected by the police and allowing to make it part of the final report. Order dated 18.09.2017 nowhere suggests that the trial Court has even looked into or referred to any evidence on record except the allegations in the FIR. It appears that the trial Court got swayed by allegations in the FIR while making the observation that allegations are serious and attributing active role in the occurrence to petitioners.

Learned State counsel submits that the police after completion of investigation against the petitioner has submitted final report in the shape of supplementary challan on 16.11.2017 and the same is attached with the main case.

Keeping in view above facts, I am of the considered opinion that order dated 18.09.2017 passed by the trial Court is not sustainable in the eyes of law and the same is set aside. Consequently, petition (CRM-M-561-2018) is allowed. It is, however, made clear that the trial Court will be at liberty to pass any order if the evidence collected during investigation or produced before the Court warrants summoning of any of the petitioners at later stage.

Learned counsel for petitioner in CRM-M-47644-2019 submits

that the petitioner-Hardeep Singh is in custody for the last about 2 years and 7 months and not even a single witness has been examined so far.

Learned counsel for the complainant submits that proceedings were stayed before the trial Court vide order dated 19.01.2018 passed in CRM-M-561-2018.

Keeping in view allegations against petitioner-Hardeep Singh in CRM-M-47644-2019 and that the CRM-M-561-2018 is also being disposed of, I find no reason to extend the benefit of regular bail to him at this stage, as such, petition (CRM-M-47644-2019) is dismissed.

Trial Court is directed to expedite recording of evidence by giving short adjournments.

December 11, 2019

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No