

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-50933 of 2018 (O&M)
Date of decision:-14.05.2019

Jitender @ Jacky

.....Petitioner

Versus

State of Haryana

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Sajjan Singh, Advocate for the petitioner.
Mr. N.K. Parmar, Asst. A.G. Haryana.

TEJINDER SINGH DHINDSA J.(Oral)

This is the second petition preferred by the petitioner seeking benefit of regular bail pending trial in FIR No.266 dated 02.05.2015 under Sections 323, 364, 307, 450 and 506 of IPC and Section 25 of Arms Act, registered at Police Station Sadar, Karnal.

Counsel for the parties have been heard.

Petitioner had earlier approached this Court by filing CRM-M-37304 of 2015, seeking regular bail and such petition was allowed in terms of order dated 19.01.2016 in the following terms:-

“This order shall dispose of the present petition filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case F.I.R. No.266 dated 2.5.2015 under sections 323, 325, 365, 307, 449, 34, 506 I.P.C and section 25 of Arms Act, registered at Police Station, Sadar Karnal.

Learned counsel for the parties have been heard.

Complainant/injured is Biplu Mandal. Occurrence is stated to be of the intervening night of 2/3.5.2015.

Complainant's version is that while he was sleeping in the house of Rajender Singh, present petitioner along with other co-accused namely Sham Singh, Gautam and Vishal forcefully gained entry and having woken up the complainant asked about the whereabouts of son of Rajender. Sham Singh and Gautam co-accused were stated to be armed with country made pistol and while Vishal and the present petitioner were stated to be armed with Bindas.

Specific injury attributed to the present petitioner is of having given a Binda blow on the head. Complainant is stated to have been beaten up and then forcefully taken away under threat of the country made pistol in a white colored Swift car and then thrown in a canal about 1 ½ kms away from the village. Having done so it is also alleged that 2/3 gun shots were fired.

Petitioner was arrested on 23.5.2015.

Ostensibly, the motive behind the alleged occurrence is stated to be a dispute between the main accused namely Sham Singh and Rajender. It would be pertinent to take note that on 2.5.2015 itself the complainant/injured was examined in a Govt. Hospital and as per such report no fracture was seen. The report is appended at Annexure P-2. Curiously, the complainant thereafter got himself examined two weeks later i.e. on 16.5.2015 at a private hospital namely Virk Hospital, Karnal and in which a fracture was seen in the finger of the left hand. Armed with this report from the private hospital the I.O is stated to have taken up the matter with the Chief

Medical Officer, Kalpana Chawla Medical College and Hospital, Karnal stating that earlier X-ray reports had not been prepared at Govt. Hospital Karnal. Learned State counsel has not been able to explain such stand and statement on the part of the I.O. Be that as it may, a second opinion at Kalpana Chawla Medical College and Hospital, Karnal has noticed a chip fracture on the proximal phalanx of the left index finger. Even though, the direct role attributed to the petitioner was of a Binda blow on the head, no injury corroborating the complainant's version to such extent has been seen. Learned counsel appearing for the complainant would oppose the present petition by stating that the main accused Sham Singh is a hardened criminal and is involved in as many as eight other criminal proceedings. However, in the same breath it has been conceded that even though one more F.I.R against the petitioner under the Arms Act has been registered but that also relates to the same very occurrence and to the same very transaction.

Before the Trial Court the complainant/injured has already been examined. After recording of his deposition even an application under section 319 Cr.P.C has been moved for summoning of additional accused. Trial, as such, would thereafter start de novo. In an overview of the matter, the petitioner is held entitled to the benefit of regular bail.

Present petition is, accordingly, allowed. Petitioner be enlarged on bail subject to satisfaction of C.J.M./Duty Magistrate, Karnal.

Petition disposed of.”

Apparently petitioner having been granted bail did not appear before the Trial Court on 13.12.2016 as also on 19.01.2017 and was ultimately declared a proclaimed offender vide order dated 05.07.2017.

Petitioner was however arrested on 15.10.2017 in a different FIR and on production warrants, appeared in the present case on 12.12.2017.

Learned State counsel would vehemently oppose the prayer made in the instant petition by contending that no indulgence ought to be shown in favour of a proclaimed offender.

Undoubtedly petitioner had evaded trial proceedings. Be that as it may he was thereafter arrested and has been shown to be in custody in the present case since 12.12.2017.

In the light of the reasoning given by this Court in the pervious order dated 19.01.2016 in CRM-M-37304 of 2015 and coupled with the length of incarceration now suffered since 12.12.2017, petition is allowed.

Petitioner be enlarged on bail subject to satisfaction of CJM/Duty Magistrate, Karnal.

Petition disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

May 14, 2019

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No