IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.M.P.(M) No. 2124 of 2020

Reserved on: 15.12.2020

Date of Decision: December 24, 2020

Naresh Kumar …Petitioner.

Versus

State of Himachal Pradesh ..Respondent.

Coram:

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting?[1]

For the Petitioners:	Mr. N.K. Thakur, Senior Advocate, alongwith Mr.Divya Raj Singh, Advocate, through Video Conferencing.
For the Respondent:	Mr.R.P. Singh, Deputy Advocate General, through Video Conferencing. Inspector Manoj Kumar, SHO Haroli, present in person alongwith record.

Vivek Singh Thakur, J.

Petitioner herein, is an accused in case FIR No.215 of 2020 dated 06.09.2020, registered in Police Station Haroli, District Una H.P., under Sections 302 and 323 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'IPC' in short) and Sections 25, 27 and 30 of the Arms Act, 1959. As claimed he has been arrested on 09.09.2020 and after remaining in police custody he is now in judicial custody. Challan has been presented in the Court on 07.11.2020, which is pending consideration.

[1] Whether reporters of the local papers may be allowed to see the judgment?

2. Status report stands filed, wherein statement of complainant Ashwani Kumar, recorded under Section 154 Cr.P.C., has been reproduced and according to the said statement, complainant is Panchayat Pradhan, who was having land dispute with Harjot Singh co-accused and his family, but correction of revenue record has not been effected yet and on the disputed land, IPH Department has been constructing irrigation water tank outlets through Contractor. On 06.09.2020, on a call of IPH Contractor, complainant had reached the spot at 9.15 a.m., where Naresh Kumar (petitioner) of IPH Department was also present alongwith Contractor, and Suresh Kumar and Mukesh Kumar sons of accused Harjot Singh alongwith their father were also present. Complainant had objected construction of cement tank for water outlet on the disputed land with a request to construct the same later on, but on this, Naresh Kumar-petitioner had overpowered the complainant and Harjot Singh and his sons Suresh Kumar and Mukesh Kumar had started beating complainant with wooden sticks, kicks and fist blows and at that time, Ashwani Kumar (deceased) son of Desh Raj had tried to intervene to stop quarrel. Whereupon, Harjot Singh accused had asked his son Suresh Kumar to take out the gun to kill Ashwani Kumar son of Desh Raj by saying that the said Ashwani Kumar was root cause of the quarrel and thereupon, Suresh Kumar brought the gun and fired a gunshot on the chest of Ashwani Kumar son of Desh Raj and thereafter all accused except Suresh Kumar had run away from the spot. Injured Ashwahi Kumar had asked the complainant to run away from the spot as he had received bullet injury. At that time, Suresh Kumar remained on the spot for about

10-15 minutes and when villagers started gathering on the spot, Suresh Kumar had also run away from the spot. Injured Ashwani Kumar was shifted by complainant in his vehicle with the help of his sons Chetan, Rajender and Raj Kumar to the Government Hospital for treatment, but he had succumbed to injuries on way to the hospital. Lastly, it is stated that this entire plan had already been conspired by all four accused.

3. As per status report, on the basis of statement of complainant, FIR was registered and investigation was carried on. Besides postmortem of deceased Ashwani Kumar, complainant-Pradhan Ashwani Kumar was also subjected to medical examination and as per final report, Medical Officer on his MLC has opined that injuries received by complainant-Pradhan Ashwani Kumar were simple and blunt.

4. Record, produced on 15.12.2020, was also perused and photocopies of the relevant record were retained.

5. Learned counsel for the petitioner has canvassed that at the time of making statement under Section 154 Cr.P.C., no allegation of conspiracy was levelled against Naresh Kumar-petitioner for commission of offence under Section 302 IPC. However, to improve the case, after four days of the incident, on 09.09.2020, a supplementary statement of complainant has been recorded, wherein he has tried to implicate the petitioner by saying that at the time of incident, Naresh Kumar-petitioner had been giving eye signals to Harjot Singh and his sons and was actively participating in the quarrel by catching hold of complainant-Pradhan Ashwani Kumar facilitating Harjot Singh, Mukesh Kumar and Suresh

Kumar to beat him with wooden sticks, kicks and fist blows. According to learned counsel for the petitioner, this supplementary statement has been recorded on the basis of an afterthought in order to rope the petitioner in commission of offence. It is further contended that Naresh Kumar-petitioner was present on the spot not as a party or an interested party in either way, but on account of direction of the Department in order to facilitate execution of work awarded to the Contractor and even if, it is considered that he had participated in the quarrel, for the record produced in the Court, it is evident that he was having no intention or *mens rea* to commit the offence under Section 302 IPC by murdering deceased Ashwani Kumar. It is also contended that there is no direct or indirect, overt or hidden act on the part of Naresh Kumar-petitioner in the commission of murder by Suresh Kumar on direction of Harjot Singh on the part of the petitioner and in case prosecution story is taken to be true as it is then also, role of Naresh Kumar-petitioner is limited only to the extent that he had caught hold of complainant-Pradhan Ashwani Kumar during fight and as per prosecution case, it was Harjot Singh, who asked Suresh Kumar to bring the gun to kill deceased and then Suresh fired gunshot on the chest of deceased Ashwani Kumar. Blood stains of deceased Ashwani Kumar have also been found on their clothes.

6. It is also submitted on behalf of petitioner that during investigation, clothes of accused were sent for chemical analysis and in the said report, contrary to Harjot Singh, Mukesh Kumar and Suresh Kumar, no blood was detected on shirt and pants of Naresh Kumar-petitioner and fiber stuck to the barbed wire were different

from the fibers/fibrils to shirt and pants of Naresh Kumar-petitioner. Whereas, blood was detected on the T-shirt of Mukesh and Paijama of Harjot Singh.

7. Contractor Harvinder Singh in his statement recorded under Section 161 Cr.P.C., has stated that when scuffle had started between the parties he had asked Naresh Kumar-petitioner and his labour to run away from the spot and he alongwith his labour had fled from the spot and when they reached near Patwar Khana they heard sound of gunshot and soon thereafter, Naresh Kumar-petitioner had also joined them.

8. Bail petition has been vehemently opposed by Mr.R.P. Singh, learned Deputy Advocate General, on the ground that Naresh Kumar-petitioner is an accused for commission of heinous crime and there is public unrest in the area for commission of offence in broad daylight and, also that Naresh Kumar-petitioner, in case, is enlarged on bail, would try to influence the investigation as well as witnesses.

9. No doubt, petitioner is an accused in a murder case, however, his involvement and conspiracy on his part is to be established before the trial Court on the basis of evidence on record, but at the same time his right of personal liberty is also relevant to be considered coupled with his alleged role in commission of offence.

10. In the facts and circumstances narrated hereinabove, I find that case of Naresh Kumar-petitioner can be considered differently than main accused Harjot Singh and his sons Suresh Kumar and Mukesh Kumar and on giving thoughtful consideration to

material placed before me, in its entirety, I am of the opinion that Naresh Kumar-petitioner is entitled for bail at this stage.

11. Accordingly, petition is allowed and petitioner is ordered to be released on bail in case FIR No.215 of 2020 dated 06.09.2020, registered in Police Station Haroli, District Una H.P., under Sections 302 and 323 read with Section 34 IPC and Sections 25, 27 and 30 of the Arms Act, on his furnishing personal bond in the sum of ₹1,00,000/- with one surety in the like amount, to the satisfaction of the trial Court within three weeks from today, upon such further conditions as may be deemed fit and proper by the trial Court, including the conditions enumerated hereinafter, so as to ensure the presence of petitioner/accused at the time of trial and also subject to following conditions:-

(i) That the petitioner shall make himself available to the police or any other Investigating Agency or Court in the present case as and when required;

(ii) that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to Court or to any police officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;

(iii) that the petitioner shall not obstruct the smooth progress of the investigation/trial;

(iv) that the petitioner shall not commit the offence similar to the offence to which he is accused or suspected;

(v) that the petitioner shall not misuse his liberty in any manner;

(vi) that the petitioner shall not jump over the bail; and

(vii) that he shall not leave the territory of India without prior information. He shall inform the Police/Court his mobile/landline contact number and shall keep on informing about change in address and contact number, if any, in future.

12. It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the petitioner as deemed necessary in the facts and circumstances of the case and in the interest of justice and thereupon, it will also be open to the trial Court to impose any other or further condition on the petitioner as it may deem necessary in the interest of justice.

13. In case the petitioner violates any condition imposed upon him, his bail shall be liable to be cancelled. In such eventuality, prosecution may approach the competent Court of law for cancellation of bail, in accordance with law.

14. Trial Court is directed to comply with the directions issued by the High Court, vide communication No.HHC.VIG./Misc. Instructions/93-IV.7139 dated 18.03.2013.

15. Observations made in this petition hereinbefore, shall not affect the merits of the case in any manner and are strictly confined for the disposal of the bail application.

16. It is made clear that this bail application shall not be treated as precedent at the time of considering bail applications filed on behalf of other co-accused as case of present petitioner is altogether different than co-accused Harjot Singh, Suresh Kumar and Mukesh Kumar.

17. Registry to transmit a copy of this order to the trial Court through E-mail.

(Vivek Singh Thakur),
Judge.

December 24, 2020
(Purohit)