

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 13.02.2020

1. CRM-M-2207-2019 (O&M)

Rajiv Chahal @ Rajiv Chail

....Petitioner

Versus

State of Punjab

....Respondent

2. CRM-M-24258-2019 (O&M)

Inderjit Karwal

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. P.S. Ahluwalia, Advocate
for the petitioner (in CRM-M-2207-2019).

Mr. J.S. Bedi, Sr. Advocate with
Mr. Sanjeev Duggal, Advocate
for the petitioner (in CRM-M-24258-2019).

Mr. M.S. Nagra, AAG, Punjab.

Mr. Amit Shukla, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J.

Prayer in both these petitions is for grant of regular bail to petitioners Rajiv Chahal @ Rajiv Chail and Inderjit Karwal, in FIR No.77 dated 14.04.2018 under Sections 302, 307, 323, 353, 186, 283, 188, 160, 148, 149 IPC, Sections 25/57 of Arms Act, Sections 3(1)(t) & 3 (2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 3 of Prevention of Damage to Property Act, 2014, registered at Police Station City Phagwara, District Kapurthala.

At the very outset, learned counsel for the petitioners have brought to notice of the Court an order dated 15.03.2019 passed in CRM-M-48145-2018, vide which regular bail petition filed by co-accused Deepak Bhardwaj was dismissed by the Coordinate Bench of this Court, by passing the following order: -

“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.”

Learned senior counsel for petitioner Inderjit Karwal has argued that three FIRs were registered with three different versions. Firstly, FIR No.77 was registered at the instance of Inspector Gurmeet Singh regarding a

free fight amongst workers of Ambedkar Sena and the workers of Shiv Sena (to which both the petitioners belong) and subsequent thereto, on account of death of one Yashwant @ Bobby, who suffered firearm injuries, on the statement of another injured-complainant Kulwinder Kumar @ Mantu from his side, vide DDR No.023 dated 03.05.2018, Sections 302, 307, 323, 148, 149 IPC read with Sections 25/27/54/59 of Arms Act and Sections 3(2) & 6 of SC&ST Act were added. It is further submitted that as per statement of the complainant, petitioner Inderjit Karwal, Deepak Bhardwaj, petitioner Rajiv Chahal @ Rajiv Chail and Shivi Bhatta had fired directly on the complainant party with their respective weapons and one bullet hit Yashwant @ Bobby on his head and Kulwinder Kumar-complainant received a bullet injury on right side of his waist.

Learned senior counsel for the petitioner has further argued that even a version was also recorded on the complaint given by injured Jimmy Karwal son of Inderjit Karwal (petitioner) and vide rapat No.19 dated 04.05.2018, Sections 307, 323, 148, 149 IPC read with Sections 25/27 of Arms Act were added. It is further argued that four licensed revolvers 3.2 bore were recovered from all the abovementioned accused and were sent to FSL for matching, however, as per FSL report, no definite opinion could be formed regarding bullet CB1 and CB2. It is next submitted that thereafter, the police submitted three different challans, details of which are as under: -

- (i) In the present case, first challan came to be presented by the investigating agency for the offence punishable under Sections 353, 186, 283, 188, 160, 148, 149 IPC and Section 3 of Prevention of Damage to Property Act, wherein the original

complainant of the FIR, namely Inspector Gurmeet Singh was reflected as the complainant. A perusal of the said challan would reveal that the same was presented against both sides i.e. members of Ambedkar Sena as well as Shiv Sena.

- (ii) The investigating agency presented another challan against the present petitioners and others for the offence punishable under Sections 302, 307, 323, 148, 149 IPC, Sections 25, 27, 54, 59 of Arms Act and Sections 3(1)(t) & 3 (2)(v) of SC&ST Act. In the aforesaid challan, Kulwinder Kumar was reflected as the complainant. A bare perusal of this challan would reveal that the same was presented against the persons, who were alleged to be members of Shiv Sena.
- (iii) The investigating agency presented third challan under Sections 323, 148, 149 IPC against the members of Ambedkar Sena. A perusal of the said challan would reveal that in the aforesaid case, co-accused of the petitioners namely Jimmy Karwal was reflected as the complainant.

Learned senior counsel for petitioner Inderjit Karwal has next argued that the petitioner is in custody for the last two years and no arrest has been made of any person of Ambedkar Sena i.e. the complainant party and no recovery has been effected, despite the fact that it was noticed in the first version of police that it was a free fight between both the sides. Learned senior counsel has referred to the statement of complainant Inspector Gurmeet Singh, who appeared as PW2 and stated that the workers of Ambedkar Sena had assembled at Paper Chowk, Phagwara and with the

intention to change the name of Chowk, had placed a board of Baba Sahib, by re-naming the same as Sanvidhan Chowk. When this witness received information, he reached at the spot and found that 200-250 persons armed with deadly weapons like kirpan, datars, pistols, danga sote and iron rods are present and are raising provocative slogans and on the other side, members of Shiv Sena are also present and they are 100-150 in number. He informed the senior police officials, who reached at the spot and tried to understand both the parties, but they attacked each other and even the police officials received some injuries. All the above named four persons along with other persons were present at the spot and both the petitioners fired shots from their revolvers and the bullet hit on the head of Yashwant @ Bobby and one shot hit on his right hip and he fell down. It is further argued that statement of complainant Kulwinder Kumar was recorded as PW1 and he also stated on the similar lines and thereafter, an application has been moved under Section 319 Cr.P.C. for summoning additional accused and also for summoning the persons, who were declared innocent by the police and this process will take some time and the trial is not proceeding further.

Learned senior counsel has referred to the interim orders passed by the trial Court to submit that the case is being adjourned repeatedly by the trial Court for deciding the aforesaid applications. It is further argued that in fact, the complainant party, without any right, assembled at Paper Chowk, Phagwara with an intention to re-name it as Sanvidhan Chowk and has put the board on the same. The members of Shiv Sena also reached there and it was a free fight. It is lastly argued that in terms of the FSL report, none of the licensed weapons of the aforesaid four persons, including the petitioner, was

used.

Learned counsel for petitioner Rajiv Chahal @ Rajiv Chail has additionally argued that the police is not acting in impartial manner and no one from the complainant side was ever arrested despite the fact that DDR No.19 was registered under Section 307 IPC and many of the persons were declared innocent. It is further submitted that the police has not conducted the fair and impartial investigation in the case.

Learned State counsel, on the basis of short affidavit of DSP, Sub Division Phagwara, District Kapurthala dated 06.01.2020, has submitted that on verification from the Medical Officer, Civil Hospital, Phagwara and from the record of the Fortis Hospital, Ludhiana, certain documents, which were challenged by the petitioners, were found to be genuine. It is further submitted that petitioner Inderjit Karwal is involved in five FIRs, which are detailed in Para No.8 of this affidavit and the same are reproduced as under: -

- “(a) FIR No.125 dated 27.07.2016 under Sections 307, 394-A, 427 IPC, Sections 25, 54, 59 of Arms Act, Police Station City Phagwara, District Kapurthala. That in the said FIR, cancellation report has been prepared and is pending to be submitted in the Court.*
- (b) FIR No.72 dated 04.03.2000 under Sections 342, 186, 427, 506, 148, 149 IPC, Police Station Guarian, District Jalandhar. That the petitioner has been acquitted in the said case vide judgment dated 06.08.2002.*
- (c) FIR No.190 dated 06.09.2009 under Sections 323, 34, 506, 148, 149 IPC, Police Station City Phagwara, District Kapurthala.*

That in the said FIR Untraceable Report has been filed on 26.10.2020 and have been accepted by the ld. Court below.

- (d) *FIR No.77 dated 14.04.2018 under Section 302, 307, 323, 148, 149 IPC and Section 3(1)(t), 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 25, 27 of Arms Act and Section 3 of Prevention of Damage to Private and Public Property Act, 2014, Police Station City Phagwara, District Kapurthala (Present FIR).*
- (e) *FIR No.78 dated 14.04.2018 under Section 307, 392, 10, 427, 295, 353, 186, 332, 353, 188, 148, 149 IPC, 25, 27, 54, 59 Arms Act, 8 (b) National Highway Act, Police Station City Phagwara, District Kapurthala. The trial of the case is still pending.”*

With regard to petitioner Rajiv Chahal @ Rajiv Chail, in the affidavit of Senior Superintendent of Police, District Kapurthala dated 08.01.2020, it is explained that delay in the trial is on account of the fact that on many dates, the applications for exemption were moved on behalf of one or the other accused persons and a perusal of the interim orders passed by the trial Court shows that the trial Court is making all sincere efforts to proceed further, however, on 06.01.2020, 12 PWs were present but the statements of only 02 PWs namely Kulwinder Kumar and Inspector Gurmeet Singh have been recorded and the case is now fixed for recording the further prosecution evidence.

Learned State counsel has further submitted that even against petitioner Rajiv Chahal @ Rajiv Chail, some other cases are also pending.

Learned counsel for the complainant, with reference to report

under Section 173 Cr.P.C. submitted in FIR No.77, has submitted that when the weapons of all the four accused persons namely Deepak Bhardwaj, petitioner Rajiv Chahal @ Rajiv Chail, petitioner Inderjit Karwal and Shivi Bhatta were recovered, the police found that fired rounds were there in the said weapons and also recovered live cartridges, which shows that the same were used by the accused persons.

After hearing learned counsel for the parties and looking into the allegations against the petitioners and their antecedents, as per affidavit of DSP, Sub Division Phagwara, District Kapurthala as well as affidavit of SSP, Kapurthala and also considering the fact that regular bail application of one of the co-accused Deepak Bhardwaj already stands dismissed by this Court vide order dated 15.03.2019 passed in CRM-M-48145-2018, I find no ground to grant regular bail to the present petitioners.

Accordingly, both these petitions are dismissed.

Nothing observed in this order will have any bearing on merits of the case, as it is for deciding the present bail applications only.

[ARVIND SINGH SANGWAN]
JUDGE

13.02.2020
vishnu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No