

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

- I. CRM-M-9512-2020**
Date of decision: October 19, 2020
- Parvesh and another
.....Petitioners
- Versus
- State of Haryana and another
.....Respondents
- II. CRM-M-9777-2020**
- Narender alias Narpender
.....Petitioner
- Versus
- State of Haryana and another
.....Respondents
- III. CRM-M-12862-2020**
- Surender and another
.....Petitioners
- Versus
- State of Haryana and another
.....Respondents
- IV. CRM-M-18907-2020**
- Sandeep Kumar
.....Petitioner
- Versus
- State of Haryana
.....Respondent
- V. CRM-M-31499-2020**
- Mintu
.....Petitioner
- Versus
- State of Haryana and another
.....Respondents

VI.	CRM-M--23912-2020
Madan Singh	Petitioner
Versus	
State of Haryana	Respondent
VII.	CRM-M-19799-2020 (O&M)
Rakesh	Petitioner
Versus	
State of Haryana and another	Respondents
VIII.	CRM-M-22074-2020
Ravinder @ Kalu	Petitioner
Versus	
State of Haryana	Respondent
IX.	CRM-M-19591-2020
Kamal Singh	Petitioner
Versus	
State of Haryana and another	Respondents
X.	CRM-M-19656-2020
Kamal Singh	Petitioner
Versus	
State of Haryana and another	Respondents
XI.	CRM-M-19665-2020
Kamal Singh	Petitioner
Versus	
State of Haryana and another	Respondents

XII.

CRM-M-22273--2020

Kamal Singh

....Petitioner

Versus

State of Haryana and another

....Respondents

XIII.

CRM-M-19587--2020

Kamal Singh

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sumit Sangwan , Advocate for the petitioner.
(In CRM-M-9512, 31499, 23912, 19799, 22074-2020)

Mr. V.K. Sheoran, Advocate for the petitioner
(In CRM-M-9777 & 12862-2020)

Mr. Abhimanyu Singh, Advocate for the petitioners
(in CRM-M-18907-2020)

Mr. B.R. Rana, Senior Advocate with
Mr. Gagandeep Rana, Advocate for the petitioner
(in CRM-M-19591, 19656, 19665, 22273 & 19587-2020)

Mr. Manish Bansal, DAG, Haryana.

Mr. Vineet Chaudhary, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

Vide this common order, the Court intends to dispose of the all
above mentioned petitions.

The arguments were heard and the judgment of bunch of
petitions was reserved on 2.9.2020. However, on that date, counsel for the

accused has submitted that he has filed some more petitions and, accordingly, arguments in other petitions were heard on subsequent dates and the judgment was reserved in the last case, i.e. CRM-M-34199-2020 on 8.10.2020.

Before referring to the facts, it would be appropriate to refer to the prayers made in all these petitions.

ANTICIPATORY BAILS

Prayer made in CRM-M-9512-2020 filed by Parvesh son of Surender @ Pappu and Surender @ Pappu son of Jas Ram, is for grant of anticipatory bail to the petitioners :-

On 4.3.2020, the following order was passed :-

“Prayer in this petition is for grant of anticipatory bail to the petitioners in FIR No.415 dated 14.10.2018 registered under Sections 147, 148, 149, 302, 307, 323 and 341 (Sections 186, 325, 332, 353 IPC), registered at Police Station Badhra, District Charkhi Dadri.

Counsel for the petitioners has relied upon the order dated 13.02.2020 passed in CRM-M No.4547 of 2020, which reads as under:-

“On 03.02.2020, the following order was passed:

“.....Learned counsel for the petitioner submits that petitioner is not challenging the summoning order passed under Section 319 Cr.P.C. and is ready to surrender before the trial Court and face the trial. Learned counsel for the petitioner relies upon the order dated 27.11.2019 passed in CRM-M-49067-2019, wherein the following observation

was made:-

“....Brief facts of the case are that complainant/injured Pardeep got recorded his statement to the police, at PGIMS, Rohtak, alleging therein that on 14.10.2018, at 10.00 a.m. Kamal Singh son of Kanha Ram was ploughing his field adjacent to the village with the help of tractor. Family members and relatives of Kamal Singh were also with him at that time. It is further alleged that at about 11.00 a.m. Kamal Singh after ploughing his fields came out of the field, when some persons in another tractor from the field side, and some other persons from other side, came there, and they stopped their tractor in front of the tractor of Kamal Singh and surrounded Kamal Singh etc. They attacked Kamal Singh etc. and inflicted injuries to them with their weapons. It is further alleged that on hearing the noise, complainant Pardeep along with Vikas and Sombir also reached at the spot. The attackers included Madan, Kamal Singh, Surender @ Pappu, Raj Singh son of Jag Ram, Ved Parkash @ Bedu, Rakesh son of Surender @ Pappu, Vijay, Rakesh Kalu son of Raj Singh, Amit son of Madan Singh, Sachin son of Kamal Singh, Sombir, Narpender son of Prahlad, Satish, Satbir son of Badri, Sukhvender son of Karan Singh, Sandeep son of Randhir, Amit son of Mahender, Mintu son of Mahender, Surender, Samunder son of Mange Ram and Surender son of Lakhbir. Rajesh gave several axe blows on the head of Vikas. Narpender also gave axe blow on the head of Vikas. Other assailants also inflicted dandas blows on Vikas. Then Sombir with the intention to kill the complainant drove his tractor on him. Other persons also inflicted injuries with dandas and lathis to him. It is also alleged that Kamal Singh

in order to save himself fired shots from his licenced pistol . 12 bore, which hit Sombir. Thereafter, Manjeet, brother of complainant took the injured/victims to General Hospital, Bhiwani, but on the way Vikas and Sombir succumbed to their injuries. Complainant and Kamal Singh were referred to PGIMS, Rohtak. Learned counsel for the petitioner submits that as per allegations in the FIR, 22 persons were present at the spot and during investigation, the persons, who caused injuries, were arrested and challan qua them was presented and 14 other persons were found innocent including the petitioner. It is further submitted that now the prosecution has filed an application under Section 319 Cr.P.C., in which all the aforesaid 14 persons have been summoned and the petitioner is ready to surrender before the trial Court and face the trial. Learned State counsel, on instructions from SI Ram Avtar, has not disputed the factual position that at one point of time, the petitioner was declared innocent....”

Notice of motion for 13.02.2020.

In the meantime, the petitioner is directed to appear before the trial Court within a period of ten days from today and on doing so, the trial Court/Duty Magistrate shall release the petitioner on interim bail subject to his furnishing bail/surety bonds to its satisfaction.”

Learned counsel for the petitioner submits that the petitioner, in pursuance to the order dated 03.02.2020, has already appeared before the trial Court and he has been released on interim bail.

Learned counsel for the petitioner further submits that he has the instructions to say that the petitioner will not

challenge the order passed under Section 319 Cr.P.C. and will face the trial.

Learned counsel for the State, on instructions from SI Prem Singh, assisted by learned counsel for the complainant, has not disputed the factual position. In view of the above, the petition is allowed and order dated 03.02.2020 is made absolute subject to the conditions envisaged under Section 438(2) Cr.P.C.”

Counsel for the petitioners has further argued that he has the instructions to say that the petitioners do not want to challenge the order under Section 319 Cr.P.C. and will face the trial. It is further submitted that the allegations against the petitioners are also of identical nature as the petitioners were also found innocent during the investigation and are now summoned under Section 319 Cr.P.C.

Notice of motion for 26.03.2020.

In the meantime, the petitioners are directed to appear before the Investigating Officer within a period of 10 days from today to join investigation and they shall be released on interim bail on furnishing bail/surety bonds subject to the following conditions:-

1. They shall make themselves available for interrogation by a police officer as and when required;
2. They 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 him from disclosing such facts to the Court or to any police officer; and

3. They shall not leave India without previous permission of the Court.”

In CRM-M-9777-2020, another accused Narender @ Napender son of Prahlad has prayed for anticipatory bail and he was granted interim bail by this Court on 5.3.2020 while relying upon the aforesaid order.

In CRM-M-12862-2020, petitioners-Surender and Samunder, both sons of Hari Singh @ Mange Ram had prayed for grant of anticipatory bail. In this case, no interim order was passed. Rather, on 27.5.2020, some clarification was sought from the trial Court, which is referred to in the later part of the judgment.

In CRM-M-18907-2020 filed by accused Sandeep Kumar son of Randhir Singh prayed for grant of anticipatory bail. In this case also, there is no interim stay granted to the petitioner.

In CRM-M-31499-2020, filed by Mintu son of Mahender, prayer is made for grant of anticipatory bail.

REGULAR BAILS

In CRM-M-23912-2020 accused Madan Singh son of Jas Ram has prayed for grant of regular bail.

In CRM-M-19799-2020, accused-|Rakesh son of Raj Singh is praying for regular bail.

In CRM-M-22074-2020 filed by Ravinder @ Kalu son of Raj Singh, prayer is made or grant of regular bail.

CANCELLATION OF ANTICIPATORY BAILS

In all these petitions, similar orders were passed as observed in CRM-M-9512-2020.

The victim/complainant Kamal Singh son of Kanha has filed CRM-19587-2020 praying for cancellation of anticipatory bail granted to accused-Sukrampal @ Vijay son of Raj Singh in CRM-M-4547-2020 vide order dated 13.2.2020.

In CRM-M-19591-2020 filed by victim-Kamal Singh prayer is for cancellation of anticipatory bail granted to accused-Sukwinder Singh son of Karam Singh in CRM-M-4547-2020 decided on 13.2.2020.

In CRM-M-19656-2020 filed by victim-Kamal Singh, prayer is for cancellation of anticipatory bail granted to accused Kamal Singh son of Jas Ram vide order dated 27.11.2019 passed in CRM-M-49067-2019.

In CRM-M-19665-2020, filed by Kamal Singh, prayer is for cancellation of anticipatory bail granted to Sachin Kumar son of Kamal Singh vide order dated 13.2.2020 passed in CRM-M-53574-2019.

In CRM-M-22273-2020, filed by Kamal Singh, prayer is for cancellation of anticipatory bail granted to Satish and Satbir, both sons of Badri Prashad vide order dated 13.2.2020 in CRM-M-2947-2020.

Reply by way of affidavit of Deputy Superintendent of Police, Badhra, District Bhiwani is filed in one of the petitions as well as in the

prayer for cancellation of bail. Reply, on behalf of some of the accused is also filed.

It is worth noticing that in CRM-M-12862-2020, the prayer is for grant of anticipatory bail and a report was sought from the Additional Sessions Judge, Charkhi Dadri/trial Court as to how in the circumstances of the case, application under Section 319 Cr.P.C. was filed. The order is reproduced as under :-

“Case taken up through video conferencing.

As per the prosecution story one Pradeep, Vikas and Sombir suffered injuries in an incident, which took place on 14.10.2018 at about 10:00 a.m. at the hands of Kamal Singh including the present petitioners Surender and Samunder. Sombir and Vikas had succumbed to the injuries. Formal FIR No.415 dated 14.10.2018 for the offences under Sections 147, 148, 149, 302, 307, 323 and 341 IPC (Sections 186, 325, 332 and 353 IPC added later on) was registered at Police Station Badhra, District Charkhi Dadri. The investigating agency had filed challan against eight accused, namely, Madan son of Jasram, Raj Singh son of Jasram, Ravinder son of Raj Singh, Amit son of Mahender, Rakesh son of Raj Singh, Amit son of Madan Singh, Rajesh son of Surender and Sombir son of Prahlad. In the charge-sheet, it was mentioned that other persons including the present petitioners were yet to be arrested and supplementary challan would be filed against them. It was further mentioned that police had made efforts for their

arrest but they had escaped arrest so far. One Kamal Singh was said to have been declared as innocent in the investigation conducted by DSP Dalip Singh. In that way, the petitioners have been on run. Strangely enough, the prosecution filed an application under Section 319 Cr.P.C. for summoning of such accused, who were yet to be arrested to face trial along with the other eight accused, who had been challaned. It seems that the application itself was misconceived. Things could have been understood, if the remaining accused named in the FIR including the petitioners had been found innocent as a result of investigation and their names given in column No.2 of the final report under Section 173 Cr.P.C. If during the trial some incriminating evidence come against them then the prosecution would have been justified in moving application under Section 319 Cr.P.C. against such accused not challaned by the police for summoning them as additional accused to face trial along with the accused already sent up to face trial. But it was not to be. It is very strange that the application was filed and the Court seems to have allowed it without proper application of mind, when the present petitioners and other persons summoned by allowing application under Section 319 Cr.P.C. had already been nominated and they were on run and efforts for their arrest being made as stated by the investigating agency. The proper procedure for the investigating agency was to either arrest those accused and if they could not be arrested to get them declared as proclaimed offenders and then file supplementary challan in the Court. Moving application under Section 319 Cr.P.C. was neither required to be moved nor order needed to be passed thereon. Some of such accused are said to have been approached this Court for

grant of pre-arrest bail where interim bail had been granted to them by Co-ordinate Benches. The present petitioners are seeking parity with such accused. However, in my view they are not entitled to any interim relief for such like reason more particularly when role played by each of the assailant in the case is different and in view of the above discussion.

Learned counsel for the petitioners states that the petitions of co-accused is listed for 21.7.2020 and the present petition be also listed for the said date.

Adjourned to 21.7.2020.

The State counsel is directed to submit report in the Court as to under what circumstances application under Section 319 Cr.P.C. was filed and report be also obtained from learned Additional Sessions Judge, Charkhi Dadri in that regard.”

In compliance of the above orders, the trial Court has submitted the following report :-

- “1. A criminal trial titled ‘State of Haryana Versus Madan and others’, pertaining to case FIR No.415 dated 15.10.2018, under Sections 147, 148, 148, 302, 323 and 341 of IPC, Police Station Badhra, is pending trial in the Court of undersigned;
2. In the present case FIR, final report/charge sheet against eight persons, namely, Madan son of Jasram, Raj Singh son of Jasram, Ravinder son of Raj Singh, Amit son of Mahender, Rakesh son of Raj Singh, Amit son of Madan Singh, Rajesh son of Surender and Sombir son of Prahlad was filed on 11.1.2019 before learned Illaqua/Duty Magistrate. It was further stated in the charge-sheet that other named accused persons are yet to be arrested and

supplementary charge-sheet/final report will be filed after their arrest. The present matter was received in this Court after committal, on 31.1.2019.

3. On 22.2.2019 arguments on charge were heard, and charges were framed against the above-mentioned eight accused persons and case was adjourned to 26.3.2019 for prosecution evidence.
4. On 26.3.2019, no PW was present. Learned counsel for one of the accused persons moved an application for supply of some documents. Further, at the request of prosecution and the complainant counsel, status report was called qua the named accused persons, who were yet to be arrested, as per charge-sheet.
5. On 23.4.2019, police filed a status report, in which, it was submitted that in the further investigation by DSP, Badhra, Kamal Singh son of Jasram was found innocent, and arrest of remaining accused persons, namely, Surender alias Pappu son of Jasram, Ved Parkash alias Bedu son of Surender alias Pappu, Vijay Singh son of Raj Singh, Sachin son of Kamal Singh, Narpender son of Prahlad, Satish son of Badri, Satbir son of Badri, Sukhwinder son of Karan Singh, Sandeep son of Randhir, Mintu son of Mahender, Surender son of Mange Ram, Samunder son of Mange Ram and Surender son of Lakhbir, all residents of village Jagram Bass is pending and arrest warrants of the above-named accused persons were got issued form the Court of learned JMIC, Charkhi Dadri for 16.5.2019.
6. Fresh status report was called for 17.5.2019 and the similar report was filed by the police. Not being satisfied with the report and efforts on part of the police, the matter was brought into the knowledge of Superintendent of Police,

Charkhi Dadri and fresh status report was called again on 4.6.2019.

7. On 4.6.2019, again a similar status report was filed by the police, wherein, it was mentioned that the arrest of those persons is still pending and arrest warrants have been got issued from the Court.
8. On 2.7.2019, a similar status report was filed, stating that tremendous efforts are in progress for the arrest of above-mentioned named accused persons in pursuance of arrest warrants.
9. On 6.8.2019, again a fresh status report was filed, mentioning that serious efforts are in progress for the arrest of above-mentioned named accused persons in pursuance of arrest warrants.
10. On 3.9.2019, another status report was filed, once again mechanically reiterating that efforts for arrest of above-mentioned/named accused persons are in progress and warrants have been got issued qua them for 6.9.2019. This Court in the order-sheet dated 3.9.2019 accordingly constrained to observe that none of the named accused persons was arrested by the police and repeatedly similar status reports were filed. It was further observed that except for taking warrants of arrest on papers no serious efforts was made by the Investigating Agency. Considering the facts, matter was again brought into the knowledge of learned Superintendent of Police, Charkhi Dadri for taking appropriate steps, and fresh status report was called for 17.9.2019.
11. On 17.9.2019, despite bringing the matter into the knowledge of learned Superintendent of Police, Charkhi

Dadri, the status report was filed by the police, mentioning that despite efforts they failed to arrest any of the named accused persons and they have moved application for the proclamation which has been kept pending for 24.10.2019 for consideration by the Court of learned JMIC, Charkhi Dadri.

12. Meanwhile, on 21.9.2019, an order dated 16.9.2019 of Hon'ble Punjab and Haryana High Court in CRM-M-36380-2019 was received, wherein Hon'ble High Court directed this Court to conclude the testimony of the complainant on the date fixed or within a period of two weeks from the date of order. Accordingly, PW1 Pardeep son of Jage Ram was examined, cross-examined and discharged on 27.9.2020. Another prosecution witness PW2 Kamal Singh was also examined. However, after his examination-in-chief, learned counsel for complainant through learned Public Prosecutor moved an application under Section 319 Cr.P.C. for summoning fourteen persons including Kamal son of Jasram, who has been exonerated by the police and thirteen others, who have not been arrested so far, as additional accused persons.
13. Vide order dated 5.11.2019, this Court allowed the application under Section 319 Cr.P.C. summoning Kamal Singh son of Jasram, Surender alias Pappu son of Jasram, Vijay son of Raj Singh, Ved Parkash alias Vedu son of Surender, Narpender son of Prahlad, Satish and Satbir sons of Badri, Sukhwinder son of Karan Singh, Sandeep son of Randhir, Mintu son of Mahender, Surender and Samunder sons of Mange Ram, Sachin son of Kamal and Surender son of Lakhbir, all residents of village Jagram Bass.

14. In the present matter, qua the summoning of additional accused persons under Section 319 Cr.P.C., it was highlighted by the learned counsel for the complainant and the learned Public Prosecutor that despite specific allegations against the above-mentioned accused persons, the police is mischievously acting indolent for past above one year. It was pointed out that as many as seven status reports were filed before the Court, wherein, police has perfunctorily reported that the accused persons are evading arrest. It was pointed out that had police been sincere in its intent, the above said accused persons could have been got declared proclaimed offenders by now, so, that the evidence recorded against the accused persons before this Court can also be considered against the absconding accused persons. However, since the police is acting hand in glove, with the above said accused persons, the course of justice has been thwarted by the police by simply remaining indolent. More so, accused Kamal son of Jasram was exonerated by the police despite specific allegations against him. Evidently police has not cited any cogent reason for absolving Kamal while implicating the other accused acting upon the strength of same complaint/statement. It was forcefully argued that the Court is not helpless to deal with such a scenario arising on account of mischief of Investigating Agency. It was further argued that power of the Court to make the ends of justice meet is not subservient to the power of Investigating Agency. Under these circumstances, the prosecution moved the present application, which was allowed.
15. The apprehension of learned Public Prosecutor and the learned counsel for complainant that the police has mischievously assumed the state of inertia is corroborated

by the fact that the moment the accused persons, who were reported to be not traceable by the police force for a year, were summoned, they immediately approached the Court of undersigned for anticipatory bail.

16. It is humbly submitted that any inadvertent effort on this Court is solely actuated with an intent to ensure the unsullied flow of course of justice.”

Counsel for the petitioners, praying for anticipatory bail, have argued that some of the accused have already been granted the concession of anticipatory bail on the premises that they do not intend to challenge the order under Section 319 Cr.P.C and are ready to face trial.

Counsel for the petitioners have further submitted that since the petitioners have been summoned under Section 319 Cr.P.C. at a later stage; their role is yet to be proved by the prosecution, therefore, they are entitled for grant of anticipatory bail. has prayed for grant of regular bail to accused

Similarly, the counsel for the petitioners in CRM-M-23912-2020 Madan Singh son of Jasram; CRM-M-19799-2020 Rakesh son of Raj Singh and CRM-M-22074-2020 Ravinder @ Kallu son of Raj Singh, have prayed for grant of regular bail to the petitioners.

Counsel for the petitioners have argued that the petitioners are in long custody; the investigation is complete and report under Section 173 Cr.P.C. has already been filed before the trial Court. It is also commonly argued on behalf of all the three accused that there is unexplained delay in registration of the FIR. It is further submitted that petitioner Madan Singh

is not attributed any injury on the deceased and, therefore, he is entitled to bail.

It is also argued that one of the co-accused Raj Singh has been granted the concession of regular bail in CRM-M-16979-2020.

It is relevant to reproduce the FIR as below :-

“Statement of Pardeep son of Jage Ram caste Jaat, resident of village Jagrambass, aged 26 years, Mb.No.9050803038. Stated that I am resident of above said address and doing agricultural work. Today on 14.10.2018 at ahbout 10 a.m. Kamal Singh son of Kana Ram caste Jaat resident of village Jagrambas, was cultivating the land situated adjacent to the vilalge from tractor. The administration some days ago handed over the possession to Kamal Singh. Along with Kamal Singh his family members and relatives was also present. When Kamal Singh after cultivating the land came on his tractor out of his field then about 11 a.m. on the passage towards the field some persoons on the tractor and some persons on the other side from the fields came on foot armed with lathis, dandas and axe. They put their tractor in front of the tractor Kamal Singh and surrounded Kamal Singh and his persons. All with common intention suddenly attacked on Kamal Singh and his persons. After hearing the noises of quarrel I along with my cousin (Tau’s son) Vikas son of Sher Singh and Sombir son of Rameshwar reached near the spot. The persons who auarrelled are namely Madan, Kamal Singh, Surender @ Pappu, Raj Singh son of Jagram, Ved Parkash @ Bedu, Ravinder @ Kalu son of Surender @ Pappu, Vijay, Ravinder @ Kalu Kalu sons of Raj Singh, Amit son of Madan Singh, Sachin son of Kamal

Singh, Sombir, Narpender sons of Prahlad, Satish, Satbir sons of Badri, Sukhvinder son of Karan Singh, Sandeep son of Randhir, Amit son of Mahender, Mintu son of Mahender, Surender, Samunder sons of Mange Ram and Surender son of Lakhbir Jaat by caste, resident of vilage Jagrambas. Rajesh son of Surender @ Pappu armed with axe, Narpender son of Prahlad armed with axe and the remaining armed with lathis. Tractor was driven by Sombir son of Prahlad. Rajesh, who was armed with axe gave axe blows on the head of Vikas below the ear of the left side of Narpender gave axe blow on the head of Vikas and thereafter, others also gave lathi and danda blows on the body of Vikas. Sombir son of Prahlad ran over his tractor upon me with intention to kill and other persons also gave danda and lathi blows to me. Thereafter, all of them attacked on Kamal Singh son of Kana Ram with their weapons. Kamal Singh in his self defence fired from his double barrel gun of .12 bore and the fire hit to Sombir son of Rameshwar Caste Jaat, resident of village Jagrambas. My brother Manjeet after arranging the vehicle brought me and my cousin Sombir, Vikas and Kamal Singh son of Kana Ram to Government Hospital, Bhiwani. In the way, Sombir and Vikas died and Sombir, Vikas and Kamal Singh brought Government Hospital, Bhiwani. The doctors declared Sombir and Vikas brought dead and after giving first aid to me and Kamal Singh, referred to PGIMS, Rohtak. After that my brother Manjeet brought us to PGIMS, Rohtak and we are under treatment. Now, you came and I recorded my statement. Legal action taken

against the accused. Statement heard and found correct.

Sd/- Pardeep
attested
Suraj Bhan SI/SHO, P.S. Badhra.

Police Proceedings Today, a telephone received from Control Room, Dadri that injured Pardeep son of Jage Ram, Kamal Singh son of Kanha Ram, caste Jaat, resident of village Jagram Bass after received injuries in a fight got admitted at Government Hospital, Dadri and, thereafter, referred to PGIMS, Rohtak. Sombir son of Rameshwar, Vikash son of Sher Singh, Caste Jaat, resident of village Jagram Bass had died and there dead body kept in mortuary of Government Hospital, Bhiwani. For further proceedings, information sent to IO and I, SI, SHO along with ESI Haresh Kumar No.518, EASI Vijay Pal 53, HC Dilbag Singh 52, HC Sandeep Kumar 21 in Government Vehicle PCR No.HR-61B-2766 driven by EHC Bijender 152 reached at Government Hospital, Bhiwani and received ruqa of the deceased Vikash and Sombir and PI of Pardeep and Kamal Singh. No witness found near the dead bodies so, I, SI, SHO in Government vehicle reached at PGIMS, Rohtak and from the doctor ruqa and MLR of Pardeep and Kamal Singh received and from the ward aforesaid statement of Pardeep son of Jage Ram recorded. The contents of the statement read over and explained to him, who after admitting the same as correct appended his signatures in English, which was attested by me SI/SHO. In the MLR No.IK/182/2018 dated 14.10.2018 in respect of Pardeep, the doctor found total five injuries that all five injuries were KUO with blunt weapon and in MLR No.IK/181/2018 dated 14.10.2018 in respect of Kamal Singh, doctor Sahib

found three injuries and that injuries No.1 and 2 KUO and injury No.3 recommended for surgery Ortho opinion. Police Proceedings – From the statement so recorded, MLRs and ruqa of brought dead offences under Sections 147, 148, 149, 323, 341, 307, 302 IPC were found to have been committed. Therefore, after writing an endorsement, the same was sent on the Whatsapp No.94670-34296 of MHC from my personal mobile Whatsapp No.94665-28622 and FIR was got registered. Investigation of the same was undertaken by me.

SI/SHO.”

It is argued that there are general allegations against the petitioners of causing injuries whereas the allegations of causing injuries with axe on the person of Vikas is attributed to Rajesh and Narpender and of causing .12 bore gun fire shot on Sombir, is attributed Kamal Singh. It is also argued that the trial is not proceeding and some of the accused have been summoned under Section 319 Cr.P.C., which has further delayed the proceedings of the trial.

Counsel has further relied upon another order dated 13.8.2020 passed in CRM-M-21037-2020 in which accused Amit was attributed causing injury with a stick and has been granted bail and submitted that the case of the petitioner is on similar footing.

Counsel has further relied upon examination-in-chief of PW1 Pradeep, wherein he has stated that petitioner-Madan was present at the spot along with other accused, carrying lathis, dandas and axe, however, no specific injury attributed to petitioner-Madan Singh.

Counsel for the petitioner has further submitted that against accused Ravinder @ Kalu there are general allegations also and the version in the FIR and the statement of PW1-Pradeep are identical and the petitioner's case is also on similar footing as of Raj Singh and Amit, who have been granted the regular bail.

Counsel has further stated that against accused Rakesh son of Raj Singh there are similar allegations and he is also not attributed any injury on deceased Vikas or Sombir.

In reply, the learned State counsel has opposed the prayer of bail on the ground that it is a case of double murder, wherein all the accused, in conspiracy with each other, have not only caused injuries to deceased Vikas and Sombir but have also caused injuries to PW Pradeep, Kamal, Amit and one Constable Jai Singh, who was on duty to maintain law and order.

Learned State counsel, on the basis of the affidavit of Deputy Superintendent of Police, Badhra has submitted that all the accused caused fatal injuries on the head of Vikas, who died and even one person Sombir also died because of the .12 bore gunshot injury used by Kamal Singh. It is further submitted that the challan was presented against accused Madan Singh, Raj Singh, both sons of Jasram, Ravinder @ Kalu son of Raj Singh, Amit son of Mahender, Amit son of Madan Singh, Rakesh son of Raj Singh, Rajesh son of Surender and Sombir and challan. It is also stated that Kamal

Singh son of Jasram was found innocent and as many as 05 persons apart from deceased were injured.

Learned Senior counsel, appearing for the complainant, has also opposed the prayer for anticipatory bail/regular bail to all the aforesaid persons on the similar grounds as alleged also stated by the learned State counsel.

As noticed above, the victim-Kamal Singh has also filed the aforesaid petitions praying for cancellation of anticipatory bail. Learned Senior counsel has argued that during investigation, it was found that Deputy Commissioner, Charkhi Dadri has passed an order and possession of 15 kanals of land was delivered to Kamal Singh son of Kanha Ram, i.e. the complainant and despite delivery of possession, the accused party forcibly ploughed the land and in this regard FIR No.385 dated 22.9.2018 under Sections 147, 149, 294, 447 and 506 IPC at Police Station Badhra was registered. It is further argued that later on, the accused again attacked the complainant party.

Learned Senior counsel has argued that after the statements of PW1 Pradeep and PW2 Kamal was recorded, in which all the accused persons were specifically named, the prosecution filed an application under Section 319 Cr.P.C. for summoning the remaining accused persons who were never declared innocent and the trial Court summoned them. Learned senior counsel has laid much stress on the explanations sought from the trial Court as well as the explanation given by the trial Court to submit that

once the police, during investigation, did not declare any of the accused persons as innocent, except Kamal Singh, there was no occasion, first for the Public Prosecutor to file an application under Section 319 Cr.P.C. for summoning the aforesaid person as an accused and even the trial Court failed to take notice of the same that the application under Section 319 Cr.P.C would lie in case where the police has exonerated some of the accused during the investigation and later during trial some evidence has come on record to summon them as additional accused. Learned Senior counsel submitted that when the police has not exonerated the persons, who are in summoned under Section 319 Cr.P.C and a wrong impression was given before this Court when the respondent/accused, namely, Sachin, Kumar and others were granted concession of anticipatory bail that they have been exonerated by the police and then summoned as additional accused, whereas the same is contrary to the factual position and the police investigation. Therefore, the anticipatory bail granted to them be cancelled.

Counsel for the complainant seeking cancellation of anticipatory bail has submitted that where the concession of anticipatory bail has been obtained by concealing the correct facts, the Court in its inherent powers can recall the said order and cancel the anticipatory bail.

The learned Senior counsel for the petitioners/complainants has relied upon 2014(3) RCR (Criminal) 853, **Mayank Pathak Vs. State (Govt. of NCT of Delhi) and another**, wherein the Hon'ble Supreme Court has declined the grant the anticipatory bail where the allegations are serious nature.

Learned senior counsel has also relied upon (2011) AIR (SC) Criminal) 1838, Brij Nandan Jaiswal Vs. Munna @ Munna Jaiswal and another, wherein the Hon'ble Supreme Court has held that bail granted by the High Court in murder case can be set aside if the same is granted without noticing the pros and cons of the case.

In reply, the counsel representing the accused persons have submitted that, in fact, the allegations regarding causing the death of Vikas @ Sher Singh are against the accused party, whereas the allegation of causing death of Sombir son of Rameshwar, who is from the side of the complainant, is on Kamal Singh son of Kahna Ram, who has filed the aforesaid petitions for cancellation of anticipatory bail. However, no police action is taken qua the death of Sombir. The counsel for the petitioners/accused have referred to the FIR, wherein complainant-Pardeep has stated that when accused attacked Kamal Singh son of Kahna Ram, Kamal Singh in his self- defence fired from his double barrel gun of .12 bore and the fire hit Sombir son of Rameshwar. Counsel has further referred to the statement of PW1 Pardeep, wherein he has stated that when Kamal Singh son of Kanha Ram fired from his gun, the pellets hit Sombir.

Counsel for the petitioners/accused have laid much stress on the statement of PW2 Kamal Singh son of Kanha Ram to submit that he has changed the version and has stated ***“due to falling on surface, the trigger of my fire arm was pressed leading to a fire.”***

It is argued that it is nowhere stated in the statement of PW2 that the fire arm hit Sombir son of Kanha Ram, who was from the side of Kamal Singh himself. It is also argued that there is variation in the version given in the FIR and the statement of PW1 Pardeep from the statement of PW2 Kamal as Pardeep has stated that Kamal Singh opened fire in self-defence which hit Sombir whereas PW2 Kamal Singh stated that due to falling on the surface, the trigger of fire arm was pressed which led to fire, without naming the injured person.

Counsel for the petitioners have further argued that looking into these allegation in the FIR, the petitioners are entitled to anticipatory bail/regular bail.

After hearing counsel for the parties, before referring to the merits of the case, it would be relevant to first deal with the query, which was put by a co-ordinate Bench vide order dated 27.5.2020 seeking an explanation from the trial Court as to how application under Section 319 Cr.P.C. was entertained and allowed against the accused persons, who were yet to be arrested to face the trial along with 08 persons, who are already facing the trial as none of these accused, who were summoned under Section 319 Cr.P.C., were declared innocent by the police and rather they were on run and the Investigating Agency was making efforts to arrest them.

The trial Court has given an explanation that the police was acting hand in glove with the accused persons by not arresting them for

more than 01 year, the trial Court actuated with an intention to ensure the cause of justice while allowing the application.

The Constitution Bench of Hon'ble the Supreme Court in case **Hardeep Singh Vs. State of Punjab and others** 2014(1) RCR (Criminal) 623 has dealt with this issue. In this case, as many as 05 questions were framed regarding the procedure summoning a person as an additional accused under Section 319 Cr.P.C. by the Court. Question No.5 and the findings recorded by the Hon'ble Supreme Court reads as under :-

“Q.(v) In what situations can the power under this section be exercised: Not named in FIR; Named in the FIR but not charge-sheeted or has been discharged ?

100. In **Joginder Singh & Anr. v. State of Punjab & Anr.**, AIR 1979 SC 339, a three-Judge Bench of this Court held that as regards the contention that the phrase any person not being the accused occurring in Section 319 Cr.P.C. excludes from its operation an accused who has been released by the police under Section 169 Cr.P.C. and has been shown in Column 2 of the charge-sheet, the contention has merely to be rejected. The said expression clearly covers any person who is not being tried already by the Court and the very purpose of enacting such a provision like Section 319 (1) Cr.P.C. clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the criminal court, are included in the said expression.

101. In **Anju Chaudhary v. State of U.P. & Anr.**, (2013) 6 SCC 384, a two-Judge Bench of this Court held that even in the cases where report under Section 173(2) Cr.P.C. is filed in the court and investigation records the name of a person in Column 2, or even does not name the person as an accused at all, the court in exercise of its powers vested under Section 319 Cr.P.C. can summon the person as an accused and even at that stage of summoning, no hearing is contemplated under the law.

102. In Suman v. State of Rajasthan & Anr., AIR 2010 SC 518, a two- Judge Bench of this Court observed that there is nothing in the language of this sub-section from which it can be inferred that a person who is named in the FIR or complaint, but against whom charge- sheet is not filed by the police, cannot be proceeded against even though in the course of any inquiry into or trial of any offence, the court finds that such person has committed an offence for which he could be tried Hardeep Singh vs State Of Punjab & Ors on 10 January, 1947 together with the other accused. In Lal Suraj (supra), a two-Judge Bench held that there is no dispute with the legal proposition that even if a person had not been charge-sheeted, he may come within the purview of the description of such a person as contained in Section 319 Cr.P.C. A similar view had been taken in Lok Ram (Supra), wherein it was held that a person, though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial.

103. Even the Constitution Bench in Dharam Pal (CB) has held that the Sessions Court can also exercise its original jurisdiction and summon a person as an accused in case his name appears in Column 2 of the charge-sheet, once the case had been committed to it. It means that a person whose name does not appear even in the FIR or in the charge-sheet or whose name appears in the FIR and not in the main part of the charge-sheet but in Column 2 and has not been summoned as an accused in exercise of the powers under Section 193 Cr.P.C. can still be summoned by the court, provided the court is satisfied that the conditions provided in the said statutory provisions stand fulfilled.

104. However, there is a great difference with regard to a person who has been discharged. A person who has been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected during investigation; the court had come to the conclusion that there is not even a *prima facie* case to proceed against such person. Generally, the stage of evidence in trial is merely proving the material collected during investigation and therefore, there is not much change as regards the material existing against the person so discharged. Therefore, there must exist compelling circumstances to exercise such power. The Court should

keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Section 398 Cr.P.C. without resorting to the provision of Section 319 Cr.P.C. directly.

105. In **Sohan Lal & Ors. v. State of Rajasthan, (1990) 4 SCC 580**, a two-Judge Bench of this Court held that once an accused has been discharged, the procedure for enquiry envisaged under Section 398 Cr.P.C. cannot be circumvented by prescribing to procedure under Section 319 Cr.P.C.

106. In **Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors.**, AIR 1983 SC 67, this Court held that if the prosecution can at any stage produce evidence which satisfies the court that those who have not been arraigned as accused or against whom proceedings have been quashed, have also committed the offence, the Court can take cognizance against them under Section 319 Cr.P.C. and try them along with the other accused.

107. Power under Section 398 Cr.P.C. is in the nature of revisional power which can be exercised only by the High Court or the Sessions Judge, as the case may be. According to Section 300 (5) Cr.P.C., a person discharged under Section 258 Cr.P.C. shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the Hardeep Singh vs State Of Punjab & Ors on 10 January, 1947 first-mentioned Court is subordinate. Further, Section 398 Cr.P.C. provides that the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrate subordinate to him to make an inquiry into the case against any person who has already been discharged.

108. Both these provisions contemplate an inquiry to be conducted before any person, who has already been discharged, is asked to again face trial if some evidence appears against him. As held earlier, Section 319 Cr.P.C.

can also be invoked at the stage of inquiry. We do not see any reason why inquiry as contemplated by Section 300(5) Cr.P.C. and Section 398 Cr.P.C. cannot be an inquiry under Section 319 Cr.P.C. Accordingly, a person discharged can also be arraigned again as an accused but only after an inquiry as contemplated by Sections 300(5) and 398 Cr.P.C. If during or after such inquiry, there appears to be an evidence against such person, power under Section 319 Cr.P.C. can be exercised. We may clarify that the word trial under Section 319 Cr.P.C. would be eclipsed by virtue of above provisions and the same cannot be invoked so far as a person discharged is concerned, but no more.

109. Thus, it is evident that power under Section 319 Cr.P.C. can be exercised against a person not subjected to investigation, or a person placed in the Column 2 of the Charge-Sheet and against whom cognizance had not been taken, or a person who has been discharged. However, concerning a person who has been discharged, no proceedings can be commenced against him directly under Section 319 Cr.P.C. without taking recourse to provisions of Section 300(5) read with Section 398 Cr.P.C. ?

110. We accordingly sum up our conclusions as follows:-

Question Nos.I to IV

xxx

xxx

xxx

Question No.V

Q.V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or **named in the FIR but not charge-sheeted** or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh. The matters be placed before the appropriate Bench for final disposal in accordance with law explained here-in-above.”

It is, thus, clear that the Court, exercising the power under Section 319 Cr.P.C., can summon a person not named in the FIR OR “**a person though named in the FIR but has not been charge-sheeted.**”

Therefore, in the present case, the accused persons who could not be arrested by the police despite being named in the FIR and were not charge sheeted can be summoned under Section 319 Cr.P.C. and, therefore, the trial Court has adopted a right approach in exercising the power under Section 319 Cr.P.C.

ANTICIPATORY BAILS

CRM-M-9512-2020

In the present petition, petitioner-Parvesh son of Suren @ Pappu and Surender @ Pappu son of Jas Ram are seeking anticipatory bail.

As per the FIR, petitioner-Parvesh is named as Bedu @ Ved Parkash son of Surender @ Pappu. His identity is yet to be established. Similarly, there is no specific allegations against petitioner-Surender @ Pappu son of Jas Ram, except that he was present at the spot.

Therefore, the order dated 4.3.2020 granting anticipatory bail to them is confirmed.

CRM-M-9777-2020

Prayer in the present petition filed by Narender @ Narpender is for grant of anticipatory bail to the petitioner.

In the present FIR, the allegations against Narender @ Narpender son of Prahlad are of causing axe blow on the head of deceased

Vikas and axe blow on the head of PW1 Pardeep. Both these injuries are duly reflected in the post-mortem report of Vikas and MLR of PW1 Pardeep and, therefore, I find no ground to grant anticipatory bail to the petitioner.

Accordingly, the interim order dated 5.3.2020 is vacated and his anticipatory bail application is dismissed.

CRM-M-12862-2020

Prayer in this petition is for grant of anticipatory bail to Surinder and Samunder, both sons of Hari Singh @ Mange Ram.

As per the FIR, and the version of PW1 Pardeep, they have given Danda blow on his back. Looking into their active involvement in the commission of offence, I find no ground to grant the anticipatory bail to the present petitioners.

Hence, the present petition stands dismissed.

CRM-M-18907-2020

In the present petition, petitioner-Sandeep Kumar has prayed for grant of anticipatory bail.

As per the FIR, except his presence at the spot, no role attributed, either by PW1 and PW2. Accordingly, this petition is allowed and the petitioner is directed to surrender before the trial Court within a period of 15 days from today and the trial Court will release him on bail, subject to furnishing bail/surety bonds to its satisfaction.

CRM-M-31499-2020

In the present petition, petitioner-Mintu has prayed for grant of anticipatory bail.

As per the FIR, except his presence at the spot, no role attributed either by PW1 and PW2. Accordingly, this petition is allowed, and the petitioner is directed to surrender before the trial Court within a period of 15 days from today and the trial Court will release him on bail, subject to furnishing bail/surety bonds to its satisfaction.

REGULAR BAILS

It is worth noticing that 03 accused persons, namely, Amit son of Mahender was granted regular bail vide CRM-M-3826-2020 on 3.3.2020 noticing that, except his presence, there is no attribution to him. Similarly, accused Raj Singh son of Jas Raj was also not attributed a specific role, was granted regular bail vide a co-ordinate Bench on 16.7.2020 and Sombir son of Prahlad, who was driving the tractor and as per allegation in the FIR, run over the tractor on PW1 Pradeep was granted bail by a co-ordinate Bench on 8.6.2020, noticing that in the MLR of Pradeep no crushing injury was found. No cancellation of bail qua them is prayed for.

It is also relevant to notice that one accused Rajesh son of Surender @ Pappu is attributed axe blow on the head of Prahlad and it appears that he has not been arrested so far.

CRM-M-23912-2020

This is the second petition for grant of regular bail to Madan Singh son of Jas Ram, the first one was dismissed as withdrawn on 3.3.2020.

As per the FIR and the injured witnesses, he has given a Danda blow on the head of victim-Kamal Singh PW2. As per the FIR, when the land was allotted to Kamal Singh, he loped the same and earlier FIR No.385 was registered against him. Therefore, there is direct motive attributed to him. Therefore, finding his active role, no ground for grant of regular bail is made out.

Accordingly, the petition stands dismissed.

CRM-M-19799-2020

Prayer in this petition is for grant of regular bail to petitioner-Rakesh son of Raj Singh.

As per the allegations in the FIR, he was part of an active unlawful assembly and was also an accused in the previous FIR No.385 dated 2.9.2018 under Sections 147, 149, 294, 447, 506 IPC got registered by complainant-Kamal Singh. Therefore, I find no ground to grant him the concession of regular bail.

Accordingly, this petition stands dismissed.

CRM-M-22074-2020

This is the third petition for grant of regular bail by Ravinder @ Kalu, the first one was dismissed as withdrawn on 24.7.2019 and the second on 3.3.2020.

The allegations against the petitioner are of part of the unlawful assembly and specific role is attributed to him. He is in custody for the last more than 2 years. Therefore, keeping in view order granting bail to Amit, Raj Singh and Sombir, this petition is allowed and Ravinder @ Kalu is granted concession of regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaqua Magistrate, concerned.

CANCELLATION OF ANTICIPATORY BAILS

As noticed above, the anticipatory bail were granted to the accused persons for two reasons, firstly an impression was given that they were found innocent by the police and the secondly that they did not intend to challenge the summoning order under Section 319 Cr.P.C. and want to face the trial. Therefore, their role is reconsidered as all these accused persons, qua whom cancellation of anticipatory bail is prayed for, were never exonerated by the police and rather, they were absconding and were never arrested by the police.

CRM-M-19587-2020

Prayer in this petition is for cancellation of anticipatory bail to Sukrampal @ Vijay son of Raj Singh.

The allegation against accused Sukhram Pal @ Vijay, who was granted anticipatory bail on 13.2.2020, are that he raised a lalkara, which led to the incident. Though, no specific role is attributed but considering the fact that he initiated the attack on the 05 injured victims resulting in 02 deaths, one from each side, in view of the judgment of the Hon'ble

Supreme Court in **Brij Nandan Jaiswal's** case (supra), I find that it is a fit case where the concession of anticipatory bail needs to be recalled.

Accordingly, the anticipatory bail granted to the petitioner vide order dated 13.2.2020 in CRM-M-4547-2020, is cancelled.

CRM-M-19656-2020

Prayer in this petition is for cancellation of anticipatory bail granted to respondent No.2-Kamal Singh.

Kamal Singh, aged 59 years was found innocent during investigation and was granted anticipatory bail on 27.11.2019. Since, this accused was found innocent by the police, his case is distinguishable and there are no allegation that in the last 11 months he has misused the concession of anticipatory bail. Though, he has attributed a danda blow on the head of complainant-Kamal Singh. However, considering his age and the time period when the anticipatory bail was granted, I find no ground to cancel the bail.

Accordingly, the petition is dismissed.

CRM-M-19665-2020

Prayer in this petition is for cancellation of anticipatory bail granted to respondent No.2-Sachin Kumar son of Kamal Singh.

Accused Sachin, except for his presence at the spot, is not attributed any specific role either in the FIR or by the eye-witnesses.

Therefore, I find no ground to cancel the anticipatory bail granted to him on 13.2.2020.

CRM-M-22273-2020

Prayer in this petition is for cancel the anticipatory bail granted to petitioners, i.e. Satish and Satbir sons of Badri Prashad on 13.2.2020.

The allegations against the accused persons are of giving a danda on the hand of PW1 Pardeep. Therefore, I find no ground to cancel the anticipatory bail granted on 13.2.2020.

Accordingly, the petition stands dismissed.

Accordingly, petition, i.e. **CRM-M-9512-2020** filed by petitioners-Parvesh and Surender @ Pappu for grant of anticipatory bail is allowed and the their anticipatory bail is confirmed.

The petitions, i.e. **CRM-M-9777-2020** filed by Narender @ Narpender and **CRM-M-12682-2020** filed by petitioners-Surender and Samunder, praying therein for grant of anticipatory bail, are dismissed, and the petitions, i.e. **CRM-M-18907-2020** filed by Sandeep Kumar and **CRM-M-31499-2020** filed by Mintu, praying therein for grant of anticipatory bail, are also dismissed

The petitions, i.e., **CRM-M-23912-2020** filed by Madan Singh; **CRM-M-19799-2020** filed by Rakesh is dismissed and **CRM-M-22074-2020** filed by Ravinder @ Kalu, for grant of regular bail is allowed.

The petition, i.e. **CRM-M-19587-2020** filed by Kamal Singh is allowed and the order dated 13.2.2020 passed in CRM-M-4547-2020 granting bail to the petitioner is cancelled.

The petitions, i.e. **CRM-M-19656-2020, CRM-M-19665-2020, CRM-M-19591-2020 and CRM-M-22273-2020** filed by petitioner-
Kamal Singh, for cancellation of bail granted to the respondents, stand
dismissed.

(ARVIND SINGH SANGWAN)

October 19, 2020
satish

JUDGE

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