

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

CRM-M-17401-2020 (O&M)

Date of Decision: August 25, 2020

Radhey Shyam

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. B.S.Walia, Advocate,
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

Mr. Sushil K. Sharma, Advocate,
for the complainant.

MANOJ BAJAJ, J. (Oral)

Petitioner has filed this petition under Section 439 Cr.P.C. for grant of regular bail, pending trial in case FIR No.961 dated 02.11.2017, under Sections 302, 148, 149, 120-B IPC and Section 25 Arms Act, 1959, registered at Police Station, City Hisar, District Hisar. The petitioner is in custody since his arrest on 02.01.2018.

The above FIR was registered on the statement of Sunil Kumar, wherein it was stated that they were four brothers and were residing jointly. His brother Jai Singh alias Dholiya was a liquor contractor, and in the year 2015-16, Jai Singh and Radhey Shyam son of Sher Singh Gujjar entered a partnership for running liquor vends. In the said partnership, an amount of Rs.7-8 lacs was outstanding towards Radhey Shyam. This year, his brother Jai Singh had taken independent contract of liquor vend. On the date of occurrence, Radhey Sham contractor had sent a message to his brother Jai

Singh asking him to come to a country made liquor vend situated near Talian Bridge and get his account settled. On this, he, his brother Jai Singh and nephew Rattan reached country made liquor vend in a vehicle at about 4.30 p.m. A salesman was present there and after some time, Radhey Sham and Ashoki came on a motor cycle having pistols in their hands, who were followed by Krishan, brother of Radhey Sham, Sunder, brother-in-law of Radhey Sham, Krishan alias Murari, Mahi Pal Gujjar, Surinder son of Mahender Gujjar, Umeed alias Rinku, Parveen and two-three other persons on separate motor cycles. On reaching the spot, Surinder raised a lalkara that Dholiya should be taught a lesson for settlement of account and then, Krishan alias Murari, Mahi Pal, Surender, Umeed alias Rinku caught hold of his brother, whereas Radhey Sham and Ashoki fired from their pistols which hit his brother Dholiya. The complainant and Rattan got frightened and started running and also raised noise. On hearing the noise of gun shots, people gathered there and on seeing them, the accused persons along with their weapons ran away on their motor cycles. The complainant and Rattan rushed the victim to Sapra Hospital, Hisar, but on the way he died due to gun shot injuries. On these broad allegations, the above FIR was registered.

Learned counsel for the petitioner contends that though as per complaint, the petitioner was armed with a pistol and had fired at the victim, namely, Radhey Sham (brother of the complainant), but the said witness when examined as PW-1 has not supported the prosecution case and was declared hostile. He has invited the attention of the Court to the statement of PW-1, Annexure P-1. According to the learned counsel, the other witness, namely, Rattan, also resiled and referred to his statement Annexure P-2.

Learned counsel has contended that the co-accused of the petitioner,

namely, Krishan Kumar, Parveen and Sunder have already been released on regular bail by this Court, therefore, in the given facts, further custody of the petitioner may not be necessary as the trial is likely to consume considerable time. He prays that the petitioner be released on bail, during the pendency of the trial.

On the other hand, learned State counsel, assisted by Mr.Sushil K. Sharma, learned counsel for the complainant, has opposed the prayer on the ground that the offence is serious and the petitioner is specifically named in the FIR. It is pointed out that he was armed with a pistol and had fired at the victim which resulted into his death. However, it is not disputed by him that the material witnesses have been examined and the complainant and the other eye witness have not supported the prosecution case. He states that in all there are thirty three prosecution witnesses and eleven have been examined so far.

At this stage, Mr.B.S.Walia, learned counsel for the petitioner contends that as per the FSL report, the weapon recovered from the petitioner was not used in the alleged crime as the bullets recovered from the body of the deceased were fired from the weapon recovered from co-accused Deepak.

Considering the above background, custody of the petitioner and the fact that the trial is likely to consume considerable time to conclude as the country continues to be in the throes of global pandemic, namely, COVID-19 and the State Government and District Administration have also imposed various restrictions to curb its spread, this Court does not find any reason to decline the prayer. The petitioner after his arrest on 02.01.2018, is presently confined in judicial custody, therefore, his further detention

behind the bars may not be justified.

Resultantly, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate, Hisar.

The petition is allowed.

August 25, 2020
ramesh

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No