

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

Decided on: 08.01.2020

1. CRM-M No.17349 of 2019 (O&M)

Jaiveer @ Poppan

....Petitioner

Versus

State of Haryana

....Respondent

2. CRM-M No.34535 of 2019 (O&M)

Kuldeep Kamboj

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. N.S. Shekhawat, Advocate
for the petitioner (in CRM-M-17349-2019)

Mr. Sandeep Singh Jattan, Advocate
for the petitioner (in CRM-M-34535-2019)

Mr. Naveen Sheoran, DAG, Haryana.

Mr. Rajesh Duhan, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in these petitions is for grant of regular bail to the petitioners namely Jaiveer @ Poppan and Kuldeep Kamboj under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.76 dated 24.07.2017, for offence punishable under Sections 302 read with Section 34 of the of the Indian Penal Code, 1860 (in short

‘IPC’) registered at Police Station Buria, District Yamuna Nagar.

It is worth noticing here that this is the 2nd petition filed by the petitioner – Jaiveer @ Poppan for grant of regular bail. The earlier petitioner seeking regular bail i.e. CRM-M No.32554 of 2018, was dismissed as withdrawn on 11.01.2019 whereas this is the 3rd petition filed on behalf of the petitioner – Kuldeep Kamboj for grant of regular bail. The 1st petition i.e. CRM-M No.6118 of 2019, seeking regular to the petitioner – Kuldeep Kamboj was dismissed as withdrawn on 15.02.2019 and the 2nd petition i.e. CRM-M No.29020 of 2019 was also dismissed as withdrawn on 17.07.2019 with liberty to file the fresh bail application before the trial Court.

Counsel for the petitioners have argued that since the entire evidence has been concluded, the statement under Section 313 of the Code of Criminal Procedure (in short ‘Cr.P.C.’) is also recorded and in view of the changed circumstances that 03 of the prosecution witnesses i.e. PW8, PW9 and PW12 have not supported the prosecution version, a new ground is made out for filing the present petitions.

Brief facts of the case are that the FIR was registered on 24.07.2017 at the instance of the complainant Baljeet Singh, the father of the deceased – Ravish that his family and the family of the co-accused namely Monu @ Virender are not having good terms with each other but the deceased – Ravish used to meet Monu @ Virender. On 23.07.2017 at about 09:20 PM in the late evening, Monty son of Ashok Kamboj made a phone call from his mobile phone to the phone of the complainant that he will eliminate his son Ravish on that day. The complainant tried to make him understand that he should forget the old

enmity. Thereafter, the complainant and his son Randeep Singh went out to search for his son Ravish and have met Monty, Jaiveer @ Poppan (the petitioner herein), Nikhil maternal son of Monty, on a motorcycle near the house of Monty. Monty again threatened that they will cut Ravish into pieces. Later, they found that the car of Monu was parked near the turn of the village but nobody was present there and despite repeated efforts made to call on the phone of Ravish, the same was not picked up. Next day in the morning, on coming to know from the villagers that Ravish was lying dead near the road in the sugarcane fields of one Surinder Rana, the complainant and his family members along with many other villagers reached the spot and found that Ravish was lying dead, smeared with blood and injuries on his body. It was stated in the FIR that Monty, Monu @ Virender, Jaiveer @ Poppan and Nikhil have killed the son of the complainant Ravish due to old enmity.

Counsel for the petitioner on behalf of the petitioner – Kuldeep Kamboj has stated that the petitioner was not named in the FIR and his name has been surfaced in the disclosure statement of co-accused Monty that he was also accompanying them and was carrying a sword whereas Jaiveer @ Poppan was driving the motorcycle. In the disclosure statement of Monty, it is further stated that he has caused injuries to Ravish with his knife with an intention to kill him and Kuldeep Kamboj had a scuffle with him. Monu @ Virender and Ravish fled away on their own foot and thereafter, they chased him on a motorcycle and killed him near a sugarcane fields and then, they went to Uttar Pradesh.

Counsel for the petitioner has further argued that the

petitioner was not named in the FIR and the allegation has been leveled against him on the basis of the disclosure statement of co-accused – Monty Kamboj.

Counsel for the petitioner has further submitted that during the investigation, the police recorded the statement of 02 witnesses i.e. Sachin and Ramesh Kumar under Section 161 Cr.P.C., in which Sachin has stated that he had seen Virender Singh along with his car, Ravish, Monty and Kuldeep and in the statement of Ramesh Kumar, he has stated that he had seen the accused persons along with Ravish.

Counsel for the petitioner on behalf of the petitioner – Jaiveer @ Poppan has argued that the evidence of last seen, which has come against them is not proved as Ramesh Kumar while appearing as a witness i.e. PW8 has stated that he do not know anything about the case. This witness was declared hostile by the Public Prosecutor and when confronted with his statement under Section 161 Cr.P.C. Ex.PK regarding naming the accused persons seen by him along with the deceased – Ravish, he even denied the said statement made before the police.

Counsel for the petitioner has further submitted that even PW9 Sunder Lal, who is also a witness of last seen has not supported the prosecution version while appearing as a witness and he was also declared hostile and even, he denied his statement made before the police as Ex.PL.

Similarly, PW12 Sachin Kamboj is also a witness of last seen and while appearing as a witness, he has not supported the prosecution case and even, he was declared hostile as he also denied his

statement made before the police as Ex.PM when confronted by the Public Prosecutor.

Counsel for the petitioners have further argued that the main accused – Monu @ Virender has already been granted the concession of regular bail by the trial Court vide order dated 04.12.2017 noticing certain irregularities in the police investigation. It is further submitted that motive was attributed against the co-accused Monu @ Virender that he was having enmity with the family of the deceased – Ravish whereas no such motive is attributed to the present petitioners.

Counsel for the petitioners have further submitted that both the present petitioners were arrested on 02.05.2017 and a period of 02 years and 06 months has already elapsed and the case before the trial Court is now fixed for defence evidence and therefore, there is no possibility for the petitioners to tamper with the prosecution evidence, which already stands concluded. It is further submitted that considering the long custody of the petitioners and the stage of the trial where the petitioners have to lead their defence evidence, they may be granted the concession of regular bail.

In reply, counsel for the State, on instructions from ASI Mahender Singh, assisted by counsel for the complainant has opposed the prayer for bail on the ground that there is evidence of last seen against the present petitioners and in the disclosure statement of the co-accused Monty Kamboj, it has come that both the petitioners have participated in the commission of offence.

Counsel for the State has further argued that as per the

evidence on record, an opinion has come that the knife recovered from the co-accused Monty could have been used for commission of the offence and a motorcycle and the knife was also recovered from the petitioner – Jaiveer @ Poppan.

In reply, counsel for the petitioners have argued that there is no evidence that the knife or the motorcycle recovered from the petitioner – Jaiveer @ Poppan, was used in the crime and no recovery was effected from the petitioner – Kuldeep Kamboj.

However, it is not denied by counsel for the State that 03 of the prosecution witnesses i.e. PW8 – Ramesh Kumar, PW9 – Sunder Lal and PW12 – Sachin Kamboj were declared hostile and have not supported the prosecution version.

After hearing the counsel for the parties, without commenting anything on merits of the case, considering the fact that the petitioners are in custody for the last more than 2½ years; the entire evidence of the prosecution stands concluded; the case, before the trial Court is now at the stage of recording the defence evidence and also in view of the fact that 03 of the prosecution witnesses i.e. PW8 – Ramesh Kumar, PW9 – Sunder Lal and PW12 – Sachin Kamboj, have not supported the prosecution version and it will take some time in conclusion of the trial, the present petitions are allowed and the petitioners namely Jaiveer @ Poppan and Kuldeep Kamboj are directed to be released on bail subject to their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioners, in case they are found involved in

any other case or misusing the concession of bail, in any manner.

Nothing observed herein shall be construed as an expression of opinion on merits of the case.

08.01.2020
yakub

(ARVIND SINGH SANGWAN)
JUDGE

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