

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.19977 of 2020 (O&M)

Date of Decision : 21.09.2020

Jitender Singh

...Petitioner

Versus

State of Haryana

....Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Raghav Sharma, Advocate for the petitioner.

Mr. Surender Singh, AAG, Haryana.

B.S. Walia, J. (VC)

Case is being taken up for hearing through Video Conferencing due to the outbreak of Covid-19 pandemic.

CRM No.23300 of 2020

Allowed, as prayed for. Annexure P-5 is taken on record.

CRM-M No.19977 of 2020

1. Prayer in the petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.508, dated 09.09.2016, registered under Sections 148, 149, 302, 307 & 323 IPC, besides Sections 25 & 54 Arms Act, 1959 at Police Station Sardar Thanesar.

2. As per the prosecution, a free fight took place between two groups being supporters of rival candidate in BPSO Elections. Complainant-Anil Kumar in his statement stated that on 09.09.2016 at about 12 noon, he along with his friend Hardeep Singh went to village Umri to hand over

they reached Sector 5 near Bhagwan Parshuram College, their friends namely Ram Saran, Sukhwinder, Jitender Malik (petitioner) and Jasbir etc were standing and at the same time, about 18/20 persons came there in two vehicles and raised *lalkara* to teach them a lesson for contesting election. Raju armed with pistol, Manish and Ankush @ Thusha armed with country made pistols, Vishal armed with 12 bore gun, Cheepa @ Shivam, Pardeep Kalatgarhia and Manish armed with *gandasies* and *bindas* and Jalandhar armed with revolver, caused injuries to them. Cheepa @ Shivam caused injuries on the head of Jitender Malik with *binda*. Raju fired shot towards Hardeep and other accused fired with their respective fire arms. Jitender Singh (petitioner) to save himself and other friends fired 3-4 shots in the air with licenced revolver of Jasbir. Accused also damaged Swift Car bearing registration No.HR-41-F-9875 of Jasbir. Thereafter the assailants fled from the spot. Hardeep was shifted to LNJP Hospital, Kurukshetra, where he was declared dead.

3. Learned counsel for the petitioner contends that evidently indiscriminate firing took place from both sides resulting in injuries to members of both sides and that the petitioner fired 3 / 4 shots in the air from the revolver of Jasbir Singh of the complainant party to save himself, as well as his friends. Unfortunately one member of the complainant party i.e. Hardeep Singh died in the incident. Learned Counsel contends that the prosecution is relying upon the first report of the FSL which indicts the petitioner by recording that the bullet recovered from the head of the deceased matches having been fired from the weapon wielded by the petitioner, whereas the second FSL report states that it is not possible to give

a definite opinion *qua* the bullet recovered from the head of the deceased as belonging to the weapon from which the petitioner fired the shot.

4. Learned counsel for the petitioner contends that in view of there being contradictory FSL reports, the benefit of the same has to go to the petitioner in view of the decision of Hon'ble the Supreme Court in '**State of U.P. versus Banne @ Baijnath and others**' passed in CRA No. No.1100 of 2001, decided on 10.02.2009. Relevant extract of the same is reproduced as under:-

“11. In our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing the evidence to show him to be guilty of the offence with which he is charged. Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the same time, the court must not reject the evidence of the prosecution taking it as false, untrustworthy or unreliable on fanciful grounds or on the basis of conjectures and surmises. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. It must be added that

ultimately and finally the decision in every case depends upon the facts of each case.”

5. Learned counsel for the petitioner further contends that even it be presumed that Hardeep Singh died from the gun shot fired by the petitioner, the same was without any intention to kill his friend Hardeep Singh, as the petitioner had merely fired in the air to protect himself, as well as his friends from the accused in self defence.

6. Learned counsel for the petitioner further contends that out of 33 prosecution witnesses, none has been examined, till date, that culpability of the petitioner would be determined on the basis of evidence but the petitioner is in custody since 29.12.2019 and trial would take a long period of time to conclude in view of the circumstances prevailing on account of Corona Virus Pandemic and that no useful purpose would be served by keeping the petitioner in jail particularly in view of the fact that other accused namely Vishal, Ankush, Manish, Munish @ Manu, Sachin @ Chinu, Gurjit Singh @ Goldy and Sahil have already been granted bail by the court of the learned Sessions Judge, Kurukshetra vide orders dated 07.03.2017, 09.03.2017, 16.03.2017, 17.03.2017 and 22.03.2017, respectively.

7. Learned State Counsel contends that the case of the petitioner is different from other co-accused, who have been released on bail inasmuch as the first FSL report *indicts* the petitioner on the ground that the bullet recovered from the head of the deceased is the one fired from the

controverted that there is a second FSL report, which records that it is not possible to give a definite opinion that the bullet recovered from the head of the deceased is the one fired from the weapon wielded by the petitioner. Relevant extract of the same is reproduced as under:-

“It could be possible to form any definite opinion regarding the linkage of the fired .32” lead bullet marked as B/1 in respect of the .32” revolver marked as A/1 due to lack of sufficient individual characteristics marks present on it.

After the examination the parcels containing the exhibits/remnants have been sealed with the seal impression as per the specimen provided below.

Sd/-

*(Aman Deep Kaur)
Junior Scientific Officer (Ballistics)
30.08.2017”*

8. Accordingly, taking into account all aspects of the matter as referred to above but without expressing any opinion on the merits of the case, the petition for regular bail is ***allowed*** and the petitioner-Jitender Singh is ordered to be released on bail, subject to his furnishing requisite bail/surety bonds to the satisfaction of the learned trial Court/CJM/Duty Magistrate, concerned, provided he is not required in any other case. The petitioner shall also abide by the conditions contained in Section 437(3) Cr.P.C.

**(B.S. Walia)
Judge**

September 21, 2020

‘Rajneesh-Amit’

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