

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

(I)

CRM-M-24716-2019 (O&M)

Date of Decision:- 24.11.2020

Sanjay

... Petitioner

Versus

State of Haryana and others

... Respondents

(II)

CRM-M-37560-2020 (O&M)

Dharambir

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Deepender Singh, Advocate,
for the petitioner in CRM-M-24716-2020 and
for respondent No.2 in CRM-M-37560-2020.

Mr. Vikrant Pamboo, DAG, Haryana.

Mr. Prashant Singh Chauhan, Advocate,
for the petitioner in CRM-M-37560-2020 and
for respondents No.2 to 6 in CRM-M-24716-2020.

Mr. Bhupinder Ghanghas, Advocate,
for respondent No.7 in CRM-M-24716-2020.

(Proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J. (Oral)

1. This order shall dispose of the above mentioned two petitions filed on behalf of Sanjay and Dharambir.
2. While the petition titled as Sanjay (complainant) Vs. State of Haryana in CRM-M-24716-2019 has been filed seeking quashing of order dated 3.5.2019 (Annexure P-1) whereby a supplementary challan filed in respect of co-accused Amit has been tagged with the trial of the remaining 5 accused, the other petition i.e. CRM-M-37560-2020 titled as Dharambir (accused) Vs. State of Haryana and another has been filed seeking issuance of directions to the trial Court to conclude the trial in question in a time bound manner.
3. A few facts necessary to notice for disposal of these petitions are that FIR No.770, dated 20.9.2015, Police Station Civil Lines, Gurgaon, District Gurugram, under Sections 302, 34, 201, 120-B IPC and Section 25/54/59 of Arms Act, was lodged at the instance of Sanjay wherein upon investigation, 5 accused were initially challaned while Amit could not be arrested and was an absconder. The trial against 5 accused namely Dharambir, Mohit, Suraj, Sandeep and Kaushal (respondents No.2 to 6 in CRM-M-24716-2019) had been proceeding wherein 21 out of cited 37 PWs came to be examined while other 15 PWs were given up by the prosecution. Only one PW remained to be examined when a supplementary challan against co-accused Amit was presented in the Court on 3.5.2019, upon which the impugned order dated 3.5.2019 came to be passed.

4. The effect of passing impugned order dated 3.5.2019 vide which supplementary challan was tagged with earlier challan against 5 accused would be that the 5 accused whose trial was at fag end would have to face *de-novo* trial. While issuing notice of motion on 31.5.2019, this Court had directed that the trial qua the remaining co-accused would continue. Consequently, the remaining PWs were also examined and in fact the statements of the 5 accused under Section 313 Cr.P.C. have also been recorded. In other words, the matter is virtually at fag end as far as the 5 accused are concerned.
5. Needless to mention, upon presentation of a supplementary challan against co-accused Amit, he has to be afforded an opportunity to cross-examine all the witnesses and in fact their statements are also supposed to be recorded in his presence which would certainly mean that all the PWs have to be examined afresh. In these circumstances, when trial against the remaining 5 accused is virtually at its fag end, it will not be fair to the said 5 accused to force them to undergo a *de novo* trial, just because another co-accused has been arrested subsequently and a supplementary challan had been filed, particularly when the aforesaid 5 accused have already been in custody since the last about 5 years.
6. The learned counsel representing petitioner-Dharambir in CRM-M-37560-2020 has expressed that he has no objection for segregation of the trial of the 5 accused from the trial of co-accused Amit.
7. Shri Bhupinder Ghangas, Advocate, counsel representing accused Amit against whom a supplementary challan has been presented has

also stated that he has no objection for segregation of the trial of the aforesaid Amit.

8. The learned counsel representing State of Haryana has also expressed that even he does not have any objection for segregation of the trial of 5 accused from the trial of Amit against whom a supplementary challan came to be filed subsequently.
9. In view of the aforestated facts wherein this Court finds that the trial against the 5 accused was virtually at its fag end, it will certainly be unfair to make them undergo a *de novo* trial. Since the co-accused Amit as well as the State of Haryana do not have any objection for segregation of the trial, the petitions are accepted to the extent that trial of the 5 accused namely Dharambir, Mohit, Suraj, Sandeep and Kaushal (respondents No.2 to 6 in CRM-M-24716-2019) is ordered to be segregated from the trial of the co-accused Amit.
10. Consequently, the trial Court shall proceed with two separate trials and take all necessary steps, as may be possible and feasible under the present circumstances of spread of pandemic for expediting the conclusion of trial, especially in view the long incarceration period of the 5 accused. The statements of remaining witnesses, if any, may either be recorded by physical process, if found safe and convenient subject to adherence of all the safeguards as prescribed by the Health Authorities or the possibility of recording the same through video conferencing may be explored subject to the condition that defence counsel extends utmost cooperation for the same so that efforts may be made thereafter for hearing final arguments at the earliest.

11. Both the petitions are accepted accordingly.

November 24, 2020
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(GURVINDER SINGH GILL)
JUDGE

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