

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28497-2020

Date of Decision: 07.10.2020

Shivam

...Petitioner

vs.

State of Haryana

...Respondent

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

Present : Mr. Sandeep Bhardwaj, Advocate for the petitioner.

Mr. Surender Singh, Asstt. AG, Haryana.

B.S. Walia, J. (VC)

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

2. Prayer in the second petition under Section 439 Cr.P.C., is for grant of regular bail to the petitioner during pendency of trial in case FIR No.11 dated 03.01.2019, registered under Sections 395 and 397 IPC, 1860 and Section 25/54 Arms Act, 1959, at Police Station Sadar Bhiwani.

3. It needs noticing here that vide order dated 10.07.2020, CRM-M-15014-2020, was permitted to be withdrawn with liberty to file fresh application for bail before the learned trial Court after recording of evidence of the material witnesses.

4. Learned counsel states that due to conditions prevailing on account of Covid-19 pandemic, evidence of material witnesses is not being recorded and now the case before the learned trial Court stands adjourned to 20.11.2020. Learned counsel states that after the withdrawal of CRM-M-15014-2020, bail was granted by a coordinate Bench to similarly situated co-

accused, Rahul @ Dinu, vide order dated 17.08.2020, in CRM-M-16998

of 2020 and that from the said order, it has come out that no certificate under Section 65-B, Evidence Act, was obtained by the prosecution, therefore, CCTV footage was inadmissible in evidence.

5. Learned counsel contends that as per allegations in the FIR on 03.01.2019, when the complainant was present at his poultry farm in village Kohar, one Kirori along with two other boys (i.e. Rahul alias Dinu and the petitioner) came and demanded the keys of his vehicle from him and when he asked for the reason for the demand, co-accused Kirori fired a shot on the complainant with his country made pistol causing injury on his head. The other co-accused are also alleged to have fired shots on the complainants and on receipt of injuries the complainant fell down on which co-accused Kirori snatched the keys from the complainant and took away his vehicle.

6. Learned counsel contends that the petitioner is in custody since 03.01.2019, challan has been filed, charges have been framed and out of 22 prosecution witnesses, only one has been examined but since March, 2020, the trial is not progressing on account of conditions prevailing due to Covid-19 pandemic, complainant has merely identified co-accused Kirori but did not give any particulars of the other accused accompanying him, no test identification parade was conducted, and that the CCTV footage of the incident is inadmissible in evidence for want of certificate U/s 65-B, Evidence Act, besides the petitioner is not involved in any other case.

7. Learned Asstt. AG, Haryana, on instructions from, Inspector, Sri Bhagwan, has not controverted the aforementioned factual aspect of the matter as referred to above. He however states that a country made pistol and one live cartridge was recovered from the petitioner. Learned AAG,

Haryana, contends that the petitioner be not granted bail as he along with co-accused, Kirori and Rahul alias Dinu, robbed the vehicle of the complainant after causing injuries to him. On specific query as to whether injuries were caused to the complainant by fire arms, learned AAG, Haryana, states that as per the MLR, injuries on the complainant were only blunt and no injury had been caused by fire arms.

8. I have considered the submission of learned counsel for the parties.

9. In view of the position as noted above, especially that test identification parade was not conducted, CCTV camera footage relied upon is inadmissible in evidence in the absence of certificate under Section 65-B, Evidence Act, besides out of 22 prosecution witnesses, only one prosecution witness has been examined, and since March, 2020, trial is not progressing on account of prevailing Covid-19 pandemic and the accused is a young man of 18 years in custody since 03.01.2019, besides is not involved in any other case, no useful purpose would be served by keeping the petitioner in custody.

10. Accordingly, without commenting upon the merits of the case, the petition for regular bail is allowed and the petitioner is ordered to be released on bail during the pendency of trial on 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.

11. It is made clear that the petitioner is granted regular bail subject to the condition that he shall not commit any similar offence and in case of similar offence by him while he is on bail in the instant case, bail granted to

him shall be liable to cancellation on an application being filed by the prosecution.

12. Nothing stated hereinabove shall be taken to be an expression of opinion *qua* the merits of the case.

October 07, 2020
'Amit-Rajesh'

(B.S. Walia)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No