

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

**215**

**CRM-M No. 30663 of 2019  
Date of decision: 23.1.2020**

**RAKESH KUMAR**

**.....Petitioner**

**Vs**

**STATE OF HARYANA**

**.....Respondent**

**CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr.J.S.Mehndiratta, Advocate  
for the petitioner.

Mr.Anmol Malik, AAG, Haryana.

\*\*\*\*

**RAJ MOHAN SINGH, J.**

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail in case bearing FIR No. 252 dated 7.9.2018 registered under Sections 302, 307, 34 IPC, Section 180 IPC (added later on) and Section 25 (which is replaced with Section 27) of the Arms Act at Police Station Khol District Rewari.

Earlier CRM-M No.4515 of 2019 was got dismissed as withdrawn vide order dated 9.4.2019.

At the time of passing of the aforesaid order on 9.4.2019, the order of committal dated 4.6.2019 in FIR No. 259 dated 14.9.2018 registered under Sections 148, 323, 341, 452 and 354 B read with Section 149 IPC, police station Dahina was

not in existence. While committing the aforesaid case, the Judicial Magistrate, 1st Class, Rewari, vide order dated 4.6.2019 has observed in the following manner:-

*“Coming back to the facts of the present case, the alleged incident in both the FIRs i.e. FIR bearing No.252 and the present FIR bearing No.259 is 7.9.2018, the time of occurrence in FIR No.252 is 09:00 AM and in FIR No.259 it is 10:00 AM, which goes to suggest that the alleged offences in both the FIRs have been committed in the same transaction. Perusal of the contents of both the FIRs also suggests the same. Moreover, the complainant, the accused and witnesses in both the FIRs are also similar. Therefore, in my considered view and in view of the above referred cases, the present case should be tried by the Court of Sessions. Moreover, the committal of the present case would help the learned Sessions Court for proper adjudication of the present case. Reliance in this regard can be placed on Avneesh vs. State of M.P. (Madhya Pradesh) (Gwalior Bench) Misc. Criminal Appeal No.8065/2011, D/d 9.4.2012.”*

On the strength of aforesaid order of committal, the petitioner has preferred the present petition for grant of regular

bail.

As per the FIR, when the complainant along with Naveen and Nishant @ Nishu went towards the house of Balwan for discussing the matter/ issue, which took place 5-6 days prior to 7.9.2018, Balwan, Rakesh @ Raku and one more person armed with deadly weapons came there. Balwan fired a shot, which hit the complainant on the right side of his waist and also hit Naveen on his head. The second shot hit Naveen on his back. The complainant fled away from the spot, whereas, Naveen fell on the ground and thereafter, he was shifted to hospital where he was declared brought dead.

Learned counsel for the petitioner states that no role has been attributed to the petitioner except his alleged presence at the spot. He has been shown empty handed. Three empties have been recovered from the spot. As per FSL report, there is a matching configuration of the recovered empties with that of .32 bore licensed pistol in the name of Balwan.

Learned counsel further submits that no recovery has been effected from the petitioner. In the post mortem report of Naveen, the board of doctors have found three injuries on his person. Injuries No.1 and 2 have been declared as fire arm injuries, whereas, injury No.3 is of multiple reddish abrasions of variable sizes and shapes over left shoulder and upper outer left arm. The cause of death is haemorrhagic shock and multiple

bullet injury to vital organs i.e. brain and right kidney sufficient to cause death in natural course of life.

The complainant has also been medically examined. The doctor has found two injuries i.e. entry wound on right side lower back and exit wound on right lower back.

Learned State counsel, on instructions from ASI Dinesh Kumar, states that the case arising out of FIR No.259 dated 14.9.2018, whether originated from the same occurrence, would be debatable before the concerned Court in due course, but as per the material available with the prosecution, the petitioner has not been attributed with any fire arm injury except his presence at the spot and no recovery has been effected from him.

At the time of withdrawal of earlier petition on 9.4.2019, only five prosecution witnesses were remaining. Now only two prosecution witnesses are remaining.

Having considered the arguments in this background, I am of the view that at this stage, no final opinion on the merits of the case can be formed, but it can be seen that after committal of the case arising out of FIR No.259 dated 14.9.2018, trial of the case may get delayed.

Keeping in view the alleged culpability of the petitioner, it would be just and appropriate to grant regular bail to the petitioner.

In view of above, this petition is allowed. Petitioner is ordered to be released on regular bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court.

Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

January 23, 2020

anita

Whether reasoned/speaking

Whether reportable

(RAJ MOHAN SINGH)  
JUDGE

Yes/No

Yes/No