

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

208

1

CRM-M No.1634 of 2020 (O&M)

Date of Decision:- 04.08.2021

Rinku

...Petitioner

Versus

State of Haryana

... Respondent

2

CRM-M No.41969 of 2020 (O&M)

Parveen @ Nepali

...Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:- Mr. Manish Soni, Advocate,
for the petitioner(s).

Mr. Zorawar Singh Chauhan, DAG, Haryana.

(Through Video-Conferencing)

RAJ MOHAN SINGH, J.(Oral)

CRM-23390-2021 in CRM-M-1634-2020

This is an application to place on record the copy of
application filed by the petitioner for surrendering before the

learned Trial Court as well as order dated 12.02.2021 annexed as Annexures A-1 and A-2.

For the reasons mentioned in the application, the same is allowed and copy of application filed by the petitioner for surrendering before the learned Trial Court as well as order dated 12.02.2021 annexed as Annexures A-1 and A-2, are taken on record, subject to all just exceptions.

Main case

Vide this common order, two petitions i.e. CRM-M No.1634 of 2020, titled 'Rinku Vs. State of Haryana' and CRM-M No.41969 of 2020 titled 'Parveen @ Nepali Vs. State of Haryana' are being disposed of. Since the present petitions have arisen out of the same FIR, therefore, common facts are being noticed.

Petitioners seek grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.77 dated 22.03.2019, registered under Sections 148, 149, 302, 341 and 506 of Indian Penal Code and Section 25 of the Arms Act, 1959 at Police Station Farrukhnagar, District Gurugram.

On 28.07.2021 and the following order was passed:-

"The cases have been taken up for hearing through video-conferencing.

CRM No.19837 of 2021

This is an application for placing on record statement of PW-7 Devender on record as Annexure P5.

For the reasons mentioned in the application, the same is allowed.

Accompanying document is taken on record.

Main cases

As per allegations, the FIR was registered at the instance of Devender. The younger brother of the complainant namely Pawan @ Poni had some grievance with Pawan @ Shamboo. Around 5-6 months ago, he had come to the house of the complainant along with 4-5 persons carrying iron rods, lathies and illegal weapons. They gave threats to brother of the complainant. At that time, villagers and other family members got his brother saved. Due to old vengeance, Pawan @ Shamboo along with 4-5 accomplices again gave threats to the brother of the complainant. At about 5:30 PM, the complainant was standing in the corner of main street near house of Ramkishan. In the meanwhile, Pawan @ Shamboo along with 3-4 companions was searching the brother of the complainant Pawan @ Poni. At that time, Pawan @ Poni was sitting in a car along with Abhishek @ Ghuseri and was coming from the Namberdar street on the phirni outside of the village. Pawan

@ Shamboo, Parveen @ Nepali and 3-4 other unknown persons came there in car from the main road and suddenly came in the street and stopped the car of Pawan @ Poni. Pawan @ Shamboo, Parveen @ Nepali and 3-4 unknown persons alighted from their car. They were duly armed with country-made pistol, lathies, sticks and they ran towards brother of the complainant. Pawan @ Poni and Abhishek started running towards the fields.

The complainant also ran to save his brother. The complainant saw that Pawan @ Shamboo fired a shot and the same hit on the foot of Pawan @ Poni and he fell down. The other assailants caused injuries with lathies, sticks and thereafter Pawan @ Shamboo fired a shot in the head of Pawan @ Poni. Abhishek succeeded in fleeing from there. Pawan @ Poni died at the spot due to the injuries. On raising alarm, the assailants fled away from the spot.

Learned counsel for the petitioner(s) submits that the petitioner(s) has not been specifically named. No specific part has been attributed in respect of injury caused to the deceased. During course of investigation, the complainant filed supplementary application to the police, mentioning the names of Pawan @ Shamboo, Chetan, Parveen @ Nepali,

Rinku and Bijender. After disclosure statement(s) of the accused, Pawan @ Shamboo got the country-made pistol recovered along with two live cartridges. Accused Chetan also got recovered countrymade pistol along with three live cartridges. Rinku and Parveen got recovered one lathi each in pursuance of their disclosure statement(s). Learned counsel further submits that as per postmortem report of the deceased Pawan @ Poni, three injuries were found on his person. Injuries No.1 and 2 were gun shot injuries. Third injury was lacerated wound 2x0.5 cm on left leg anterior part muscle deep.

The complainant (PW-7) has admitted that he did not inform the police, nor called for any medical help from the mobile number. One shot was fired by Pawan @ Shamboo after alighting from the car. Another shot was fired in air and third shot was fired upon the leg of Pawan @ Poni. He has disputed the medical findings on record. The witness further stated that there was no lathi with the accused, rather they were having iron rods and baseball bats.

As per prosecution case, lathies have been recovered from Rinku and Parveen. They are in custody since 27.03.2019.

At this stage, learned State counsel on instructions opposed the bail on the ground that petitioner namely Rinku has misused the concession of interim bail. Interim bail was granted to the petitioner from 11.11.2020 to 11.02.2021, but he did not surrender on the date fixed i.e. 11.02.2021 and was arrested later on.

This fact has been strongly denied by learned counsel for the petitioner by submitting that the petitioner had surrendered on the date fixed i.e. 11.02.2021 and had never misused the concession of interim bail.

Let a specific affidavit be filed by the Investigating Officer in this regard. It is made clear that in case, the factual statement in respect of date of surrender or arrest of the petitioner is found to be untrue, appropriate action will be taken against the Investigating Officer. Learned counsel would also be at liberty to establish factum of surrender of Rinku on due date.

Adjourned to 04.08.2021.

A photocopy of this order be placed on the file of connected case.”

A perusal of the aforesaid order would show that after noticing the facts and arguments of both sides when the Court was at the verge of granting bail to the petitioner-Rinku, then the

learned State counsel on instructions from ASI Sham Lal opposed the bail on the ground that the petitioner-Rinku has misused the concession of interim bail earlier granted to him from 11.11.2020 to 11.02.2021 by not surrendering in time and he was arrested later on. The said fact was strongly denied by learned counsel for the petitioner by asserting that the petitioner-Rinku had surrendered in time and never misused the concession of interim bail.

Owing to the aforesaid situation, this Court directed the Investigating Officer to file a specific affidavit with a clear understanding that in case factual statement in respect of date of surrender or arrest of the petitioner is found to be untrue, appropriate action shall be taken against the Investigating Officer. Learned counsel for the petitioner has moved CRM No.23390 of 2021 seeking to place on record copy of application dated 12.02.2021 filed by the petitioner-Rinku for surrendering before the Court and the order dated 12.02.2021 passed by Additional Sessions Judge on the said application. Additional Sessions Judge vide the aforesaid order, accepted the application and took the petitioner in custody as he was granted bail upto 11.02.2021 only.

Faced with this situation, ASI Sham Lal, who is also present through video-conferencing admits his fault in not informing the State counsel correctly. His stand is that on

28.07.2021, he was not having police file as he was in Pataudi Court at the time of receiving phone from Sh. Anant Kataria, Deputy Advocate General, Haryana. He *bona fidely* believed his information to be correct and informed the learned State counsel that the petitioner had not surrendered on 11.02.2021, rather he was arrested later on. Now, ASI Sham Lal has filed affidavit dated 04.08.2021, admitting his fault by tendering unconditional apology to this Court for his mistake. He also undertakes that he would remain careful in future while discharging his duty. He prays for pardon. Evidently, the conduct of ASI Sham Lal has led to delay in disposal of the case on 28.07.2021, but keeping in view the unconditional apology tendered by ASI Sham Lal, No.989, Police Station Farrukh Nagar, District Gurugram, I deem it appropriate to accept his conditional apology.

For the reasons recorded in the order dated 28.07.2021, both the petitions are allowed and the petitioners are directed to be released on regular bail, subject to their furnishing adequate bail bonds/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned.

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

04.08.2021

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Whether speaking /reasoned
Whether Reportable

(Raj Mohan Singh)
Judge

Yes / No
Yes / No