

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

CRM-M-8801-2021 (O&M)
Date of Decision:- 22.11.2021

Dharambir

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. R.S.Rai, Senior Advocate with
Mr. Sushil Jain & Mr. Karan Pathak, Advocates for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana,
assisted by SI Jai Ram.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of regular bail in a case registered vide FIR No. 243 dated 18.8.2020 under Sections 148, 149, 201, 302, 506/120-B IPC and Section 25, 27, 54, 59 of the Arms Act, 1959 at Police Station Israna, District Panipat.
2. The FIR in question was lodged at the instance of Parveen wherein it is alleged that on 14.8.2020 Dharambir (petitioner) had lodged a written complaint against Vikas, Satish and others regarding dacoity at a hotel being run by him and for causing hurt to him and to others at his hotel (Dharam Hotel) and in respect of which FIR was lodged. It is alleged that on 17.8.2020 at about 1:30 p.m. Vikas came at R.O. Water Plant of complainant's brother Manish and told him that he wanted to discuss the matter regarding the FIR lodged by Dharambir for the purpose of negotiating

a compromise and requested Manish to accompany him. On the asking of Vikas, the complainant's brother Manish, his brother-in-law Rajesh, Satish and the complainant himself went alongwith Vikas for the purpose of getting some compromise effected with Dharambir and others. As soon as the complainant and others reached near the house of Dharambir, they found that Dharambir, Dharampal, Rajbir, Ajay, Vijay, Dharampal's wife, Rajbir's wife, Sumit, Sandeep and 8-10 other persons were present in the street who were armed with weapons, *lathis* and sticks. All of them entered into a verbal spat with the complainant party and started beating them. It is alleged that Rajbir was carrying a revolver in his hand, Dharambir was carrying '*gandasi*', Dharampal is also stated to be carrying '*lathi*'. All others were also armed with sticks. Upon seeing the complainant and others, Dharambir raised a *lalkara* exhorting his companions that the complainant and others be taught a lesson on account of having raised a quarrel with them at their '*Dhaba*' and that they should not be spared. It is alleged that Rajbir started firing from his revolver at complainant's brothers Manish and Satish and on account of which they fell on the ground. While they were lying fallen, Dharambir gave '*gandasi*' blow to Satish and all other persons also started causing injuries to Manish and Satish. Although, the complainant and others tried to rescue Manish and Satish but the accused threatened to attack them as well and the complainant and others saved their lives by fleeing away. Manish and Satish who received gunshot injuries and other injuries died at the spot.

3. The learned counsel for the petitioner has submitted that it is a case where the occurrence admittedly had taken place outside the house of the petitioner

when the complainant and others had come there late in the night at about 10 p.m. and as such, it can safely be said that fight, if any, had taken place on account of aggression on part of the complainant party.

4. The learned counsel has further submitted that falsity of the case would be evident from the fact that the police, upon investigation had declared a large number of accused namely Ajay, Vijay, Rajbir, Anita, Sarita and Sushil as innocent. The learned counsel, in this regard, has referred to a status report dated 23.3.2021 filed by the State counsel.
5. The learned counsel for the petitioner has further submitted that infact it stands established from CCTV footage collected by the police that the person who had alleged to have fired at Manish and Satish i.e. Rajbir was never present at the spot and was present at his hotel, when the occurrence took place. It has been submitted that the prosecution upon realizing the said infirmity in its case has now come up with a version that the petitioner made a disclosure statement on 28.8.2020 admitting that he had a revolver at the time of occurrence and that it is he who had fired at Satish and Manish.
6. It has further been submitted that the petitioner is an infirm person having various ailments and infact after he had been arrested he has undergone a bypass surgery and as such, he deserves to be released on bail so as to enable him to have proper treatment, care and attention. The learned counsel has submitted that the very fact that this Court had earlier granted interim bail to the petitioner to enable him to undertake medical treatment substantiates the fact that the petitioner does not remain well and does have heart ailment. The learned counsel has further submitted that infact it is a case of cross version wherein FIR No. 246 dated 20.8.2020, P.S. Israna, District Panipat

was also lodged by Dhajja Ram, father of the petitioner, wherein allegations have been made that Vikas, Manish and Satish had fired at them while they were sitting in the street adjoining to their house with an intention to kill them.

7. Opposing the petition, the learned State counsel has submitted that the petitioner is specifically named in the FIR and that although in the FIR he is stated to be carrying a '*gandasa*' but subsequently, it surfaced that the petitioner was infact carrying a pistol and the fact that the pistol in question has also been got recovered which is the licensed pistol of the petitioner would substantiate the case of the prosecution to the effect that it is the petitioner who had fired at the deceased. It has been submitted that in an occurrence where several accused are present with different types of weapons, it may not be possible for the complainant to give a photographic account of the entire occurrence and there are bound to be some kind of minor discrepancies and inconsistencies and that such like discrepancies and inconsistencies cannot be interpreted to mean that a false version has been put forth. The learned State counsel has informed that the petitioner as on date has been behind bars since the last about four months and that challan already stands presented.
8. I have considered rival submissions addressed before this Court.
9. There is no dispute that two persons had lost their lives on account of gunshot injuries in an incident which occurred outside the house of the petitioner on 17.8.2020. It is also borne out that about 4 days prior to present occurrence, Dharambir had lodged one FIR against Vikas and Satish who are amongst the accused in the present case. Though, the complainant

claims that it was for the purpose of negotiating a compromise that he, accompanied by other accused, had gone to the house of the petitioner but the fact that it was late in the night i.e. at about 10 p.m. that they went for negotiating a compromise and where the occurrence took place and in respect of which a cross-FIR for offence under Section 307 IPC also stands lodged against the complainant party would raise various questions requiring adjudication, particularly the question as to who was the aggressor. In other words, as to whether the firearm shots fired by the accused party at the complainant party which had come outside their house at 10 p.m. had been fired in their self-defence or as to whether they are aggressors. During the course of investigation, the investigating agency has recorded statements of some witnesses who have stated that the shots were fired by accused party in self-defence and on account of which the prosecution has deleted offence under Section 302 IPC and has substituted it with offence under Section 304 IPC.

10. Another aspect of the case, particularly qua the petitioner, is that the role attributed to him as per the initial version of the FIR is that it is one Rajbir who had fired at the deceased but subsequently, when it was found that he was not present at the spot but was present at hotel, on the basis of CCTV footage, the firearm shots have been attributed to the petitioner, although earlier the petitioner was alleged to be carrying a '*gandasa*'. Though, such like inconsistency could be explained on account of the fact that a person who is attacked by a large number of assailants may not be able to recollect accurately the sequence or the manner of occurrence but the said aspect has to be considered in context of all other evidence that may be brought on

record. The culpability of the petitioner may still be established even if it is presumed that he had not fired as he, in any case, is alleged to have raised *lalkara* as per FIR and is now alleged to have caused injuries with the help of a '*gandasa*'. However, the said aspects are such which would better be left to the trial Court to be decided after evidence is led before it.

11. Another aspect of the matter which also needs to be discussed is that the petitioner has been suffering from heart ailment and had been getting treatment from PGIMS, Rohtak and infact also underwent a bypass surgery after lodging of the FIR and on account of which he had been granted interim bail by this Court initially for a period of two months which was later extended.
12. The collective effect of the aforesaid discussion would be that the case of the prosecution qua the petitioner, particularly as regards the specific role attributed to him, would rather required to be established by convincing evidence as there exists some inconsistency qua the role of the petitioner. Further, some of the members of the complainant party themselves have dubious antecedents inasmuch as Vikas, who was present amongst the complainant party, is himself involved in as many as 13 FIRs including offences under Sections 302 and 307 IPC.
13. Keeping the said facts in mind and also that the petitioner, who is aged about 55 years, has heart ailments and has also undergone a bypass surgery recently would make out a case for grant of bail to the petitioner.
14. The petition, as such, is accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

15. It is, however, clarified that whatever observations that have been made above have been made for the purpose of deciding the present petition on behalf of the petitioner Dharambir and are not to be construed as any kind of expression on merits of the main case.

22.11.2021

kamal

(Gurvinder Singh Gill)

Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No