

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M- 13359 of 2021 (O&M)

Date of decision : 28.5.2021

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Naresh Kaushik

.....Petitioner

vs.

State of Haryana

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Kuldeep Sheoran, Advocate for the petitioner

Mr. Saurabh Girdhar, Assistant Advocate General,
Haryana

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H. S. Madaan, J. (Oral)

Case taken up through video conferencing.

The application by petitioner for placing on record documents is allowed.

This petition for pre-arrest bail under Section 438 Cr.P.C., has been filed by petitioner – Naresh Kaushik, aged about 50 years son of Badlu Ram, r/o village Dubaldhan, Tehsil Beri and District Jhajjar, an accused in case FIR No. 41 dated 15.2.2014 for offences under Sections 302, 120-B and 34 IPC and Sections 25, 54, 59 of Arms Act, registered at Police Station Beri, District Jhajjar.

Briefly stated, the facts of the case, as per the prosecution story are that, the criminal machinery in this case was set into motion

by the complainant- Ved Singh son of Hukam chand, resident of village Dhikyan, Pana Dubaldhan, District Jhajjar, who in the statement made by him to the police stated that his son Rajesh Kumar aged 23 years serving in the Indian Army, had come home on leave for about one month. Lalit son of Shiv Kumar, a resident of his village, had a quarrel with Rajesh Kumar about 3 years earlier and as such he nursed a grudge against Rajesh Kumar since then. Rajesh Kumar was threatened by Kala son of Balga, Sarvar @ Ghuggar son of Gopi. On 15.2.2014 at about 5.00 P.M., when complainant alongwith his son Rajesh Kumar had returned home from village Dadri and Raj Singh brother of the complainant also came there. Complainant and Raj Singh started talking with each other, whereas Rajesh Kumar was walking ahead of them, then Lalit son of Shiv Kumar alongwith Umesh son of Kala @ Surajmal and Naresh son of Badlu, all resident of their village, came there riding a motorcycle. Naresh Kumar was driving that motorcycle. Motorcycle was stopped near Rajesh Kumar and riders opened fire from their pistol(s) on Rajesh Kumar. Resultantly, Rajesh Kumar was hit and fell down. Then the assailants left the spot on the motorcycle. Rajesh Kumar - injured was taken to CHC Dubaldhan Hospital, for treatment but he was declared brought dead by the doctors. The complainant stated that Deepak son of Rohtash, Kala son of Balga, Sarvar son of Gopi alongwith two other boys, namely, Shiv kumar, Brahaman had hatched a conspiracy to kill his son Rajesh Kumar due to previous enmity. On the basis of said statement, formal FIR was recorded. The

investigation in the case started.

The accused were arrested in this case. On completion of investigation, Lalit, Sarwar @ Guggar, Neeraj @ Katiya, Amit @ Paru, Shri Krishan @ Shree, Deepak, Pradeep and Anurag were challaned, where as Naresh son of Badlu Ram, Umesh son of Surajmal @ Kala, Hitesh and Tapinder sons of Shiv Kukmar, were not sent up to face trial.

During the course of trial, the prosecution had moved an application under Section 319 Cr.P.C. for summoning of all the four persons, who had not been challaned by the police. That application was however, dismissed by Additional Sessions Judge, Jhajjar vide order dated 1.4.2016. That order was challenged in this Court by way of filing Criminal Revision No. 1813 of 2016 (O&M). vide order dated 22.11.2018, the said revision petition was allowed partly, in as much as dismissal of the application qua Hitesh and Tapinder was upheld, whereas with regard to Umesh and Naresh – present petitioner, it was set aside. The operative part of the order is as under :-

“Though there is no bar to summon a person not named in the FIR and whose name has subsequently cropped up in the evidence at the inquiry or trial but reverting back to the present case as has come before this Court only three persons Lalit, Umesh and Naresh have been named in the initial statement of the complainant which forms the FIR and though

subsequently the complainant as PW1 has sought to rope in other accused as well but the same has not been corroborated by his own brother PW2. As is there in the submissions of the two sides and highlighted from the records as well Lalit is already facing trial whereas Umesh and Naresh have been left off the hook for obvious reasons best known to the investigating agency which need not be commented upon at this juncture. The learned trial court in the impugned order has fallen into an error has wrongly drawn the conclusion that the complainant is trying to falsely implicate Umesh and Naresh just to settle the scores and has wrongly drawn the conclusion that the statement of complainant alone is not sufficient to summon these persons as additional accused as no prima facie case is made out at this stage. The same is contrary to the records and evidence of the case. Names of these two persons were certainly there in the First Information Report followed by the testimony of the complainant as PW1 and therefore, there are reasonable grounds by way of prima facie evidence to hold out role to these accused in the commission of the offence. However, the evidence qua the other accused so sought to be summoned namely Hitesh

and Tapender is not of any cogent and reliable nature. In the light of what has been detailed and discussed above, the present revision petition is partly allowed qua Umesh and Naresh. The impugned order is set aside to that extent. The matter is sent back to the trial court to proceed ahead as per law.

The revision petition stands disposed of in those terms.”

This order was challenged in the Apex court by way of filing Special Leave to appeal but that was dismissed vide order dated 1.7.2019.

Now the petitioner – Naresh Kaushik has been summoned to face trial by the Court of Additional sessions Judge, Jhajjar. Apprehending his arrest, he has knocked at the door of this court praying for grant of pre-arrest bail, which request is being opposed by learned State counsel.

I have heard, learned counsel for the petitioner, learned State counsel, besides going through the record and I find that the petition is doomed for failure.

The petitioner is specifically named in the FIR and is shown to have taken active part in the incident, in which a young boy was shot dead. As per the prosecution story, the assailants had come to the spot of motorcycle, which was being driven by petitioner – accused Naresh Kaushik. Though he was not challaned by the police and

learned trial Court has refused to summon him as additional accused, but that order passed by the trial Court in that regard was challenged in this Court. This Court found sufficient grounds to set aside the order qua the present petitioner and another accused Umesh. Even the Apex Court had refused to interfere in the order passed by this court. The allegations against the petitioner are very grave and serious. Merely for the reason that he had initially not challaned by the police and his co-accused are being tried in the court of law, is no ground to grant discretionary equitable relief of pre-arrest bail to the petitioner. The proper course for the petitioner is to appear in the trial Court and move an application for regular bail there.

No ground for grant of pre-arrest bail to the petitioner is made out.

Thus the petition being without any merit stands dismissed.

However, nothing discussed above shall have any bearing on the merits of the case.

28.5.2021
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No