

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

(1) **CRM-M-15852-2020(O&M)**
Yogesh
...Petitioner

Versus

State of Haryana
...Respondent

(2) **CRM-M-29989-2020(O&M)**
Sachin @ China
...Petitioner

Versus

State of Haryana
...Respondent
Date of Decision:-3.3.2021

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: **Mr.P.S. Poonia, Advocate**
for the petitioner in CRM-M-15852-2020.

Mr.Surinder Gandhi, Advocate
for the petitioner in CRM-M-29989-2020.

Mr.Karan Garg, AAG, Haryana.

H.S. MADAAN, J.

Cases taken up through video conferencing.

By this order, I intend to dispose of two petitions i.e. **CRM-M-15852-2020** filed by petitioner Yogesh and **CRM-M-29989-2020** filed by petitioner Sachin @ China, who are accused in FIR No.312 dated 22.11.2018, under Sections 148, 149, 216, 302, 120-B IPC and Section 25 of Arms Act, registered with Police Station Civil Lines, Rohtak.

Briefly stated, the facts of the case as per the prosecution

story are that criminal machinery in this case was set into motion by complainant Amit son of late Sh.Shiv Kumar, resident of Shinghpura, Rohtak, Haryana, who in the statement got recorded by him to the police stated that on 22.11.2018 at about 1:15 p.m., he along with his maternal uncle Praveen, resident of Shinghpura and younger brother Lokesh, aged about 22 years had gone to Model Town, Rohtak in connection with their work; as friends of Lokesh was standing in Double Park, Model Town, Lokesh started talking with them; the complainant and his maternal uncle were standing nearby; in the meanwhile, 10-15 boys, some of them being on foot including Rakesh, resident of Chiri, Yogesh alias Billi, resident of Mata Darwaja, Yogesh alias Bulldog, resident of Mata Darwaja, Raju, resident of Nehru Colony, came to the spot in an Endeavour car; Yogesh @ Billi was having a country-made pistol, whereas others were armed with lathies, dandas and farsas; Yogesh alias Billi started firing and the bullets hit Lokesh on left side of his abdomen and right side of his waist and he fell down; thereafter Yogesh alias Billi and his accomplices left the spot along with their respective weapons; the complainant and his maternal uncle took injured Lokesh to PGI MS, Trauma Centre, where Lokesh was declared brought dead by the doctor; while being taken to the hospital Lokesh had told the complainant and his maternal uncle that a few days earlier, a quarrel had taken place in Jaat College and the incident was result thereof.

On the basis of said statement of complainant Amit, formal FIR was recorded. Investigation in the case started. Accused Ravinder alias Chota, Yogesh alias Billi, Rajesh alias Raju were arrested in this

case on 28.1.2019 and Endeavour Car bearing registration No.HR26-AA-1902 was taken into police possession. Accused were interrogated. On completion of investigation, challan against accused Dharamraj, Sombir @ Lala, Tushar @ Sonu, Ravinder alias Chota, Vijay, Rakesh, Yogesh alias Billi, Rajesh alias Raju was prepared and filed in the Court. In the said challan, it was mentioned that Yogesh @ Billi had suffered a disclosure statement that a country-made pistol from which he had fired at deceased had been given by him to his brother-in-law Sonu, resident of Phali and it was got recovered by police of Police Station Sadar, Rohtak. Whereas other accused had also got recovered the weapons, which they were possessing at the time of the incident.

Both the petitioners/accused had filed applications for regular bail before Court of Sessions at Rohtak but were unsuccessful inasmuch bail application filed by petitioner/accused Yogesh @ Billi had been dismissed vide order dated 9.4.2020 and bail application filed by petitioner/accused Sachin @ China had been dismissed vide order dated 16.9.2020, passed by Additional Sessions Judge, Rohtak. As such they have approached this Court seeking similar relief by filing of the petitions, notices of which have been issued to the respondent - State, which put in appearance through State counsel.

I have heard learned counsel for the petitioners, learned State counsel and counsel for the complainant besides going through the record.

First coming to **CRM-M-15852-2020** filed by petitioner/accused Yogesh alias Billi.

Learned counsel for the petitioner Yogesh alias Billi has

contended that the complainant was not present at the spot at the relevant time and he has named petitioner Yogesh @ Billi as a culprit on the basis of suspicion only; furthermore the firearm allegedly used in the incident has not been recovered from the petitioner Yogesh alias Billi and firearm recovered in some other case is wrongly sought to be connected with the petitioner Yogesh alias Billi; the entire story set up by the prosecution is totally improbable; the eye-witnesses cited were actually not present at the spot at the relevant time; the story put forward is in quest oriented since only one bullet injury was found on the body of the deceased, though according to the complainant, he had received two bullet injuries; the police investigation has also revealed that bullet injury on the body of the deceased is attributed to co-accused Akash @ Golu. Under the circumstances, petitioner/accused Yogesh @ Billi, who is behind bars since 28.1.2019 and trial has not begun inasmuch as charge is yet to be framed, deserves to be granted benefit of regular bail.

The State counsel has vehemently opposed the request contending that petitioner Yogesh @ Billi is the main culprit since the gun shot injury is attributed to him. Furthermore, he is a hardened criminal inasmuch he is involved in other criminal cases i.e. FIR No.239 dated 4.7.2019, under Sections 148, 149, 323, 325, 307, 506 IPC, registered with Police Station City, Rohtak and FIR No.669 dated 26.11.2018, under Section 25 of Arms Act, registered with Police Station Sadar, Rohtak and in case he is granted regular bail, there is every possibility of his absconding in the process delaying the trial and also giving threats or inducement to the prosecution witnesses.

After hearing the rival contentions, I find that no ground for grant of regular bail to petitioner Yogesh @ Billi is made out. Petitioner/accused Yogesh @ Billi is named in the FIR and the complainant has specifically alleged that it was petitioner/accused Yogesh @ Billi having a country-made pistol in his hand, who had fired shots at Lokesh causing him injuries to which he had succumbed. Though the weapon used in the incident is not said to have been recovered from the possession of petitioner/accused Yogesh @ Billi but that is not helpful to him in any way because as per the prosecution story after the incident, he had handed over that weapon to his brother-in-law from whom it had been recovered by the police. Furthermore, the complainant stated that petitioner/accused Yogesh @ Billi had fired two shots, whereas according to medical evidence only one gun shot wound was found on the body of victim. That also does not help to the petitioner in getting bail, though this may provide some help to the petitioner/accused Yogesh @ Billi during trial, when his guilt is to be determined. It is for the trial Court to decide on the basis of evidence adduced before it as to who had fired the fatal shot Yogesh @ Billi or Akash @ Golu. Petitioner/accused Yogesh @ Billi being involved in other criminal cases, one of them being under Section 307 IPC and another under Arms Act show his criminal bent of mind pointing out that he is a habitual criminal. The apprehension expressed by learned State counsel that if granted regular bail there is likelihood of his absconding and trying to tamper with the prosecution evidence by giving threats or inducement to the prosecution witnesses cannot be brushed aside lightly and deserved to be given due attention.

Therefore, **CRM-M-15852-2020(O&M)** filed by petitioner/accused Yogesh @ Billi stands dismissed.

Now coming to **CRM-M-29989-2020** filed by petitioner/accused Sachin @ China. He is neither named in the FIR nor any recovery had been effected from him. His name is said to have cropped up in the disclosure statement made by co-accused. No injury to this petitioner/accused has been attributed. He is behind bars since 21.11.2019. The trial is yet to begin inasmuch as charge has not been framed against the accused so far. Though this petitioner/accused is said to be involved in two more criminal cases but keeping in view the totality of circumstances, I find it proper and appropriate to grant concession of regular bail to him.

Accordingly, the **CRM-M-29989-2020** filed by petitioner/accused Sachin @ China stands allowed. The petitioner namely Sachin @ China is ordered to be released on bail during the pendency of the trial, subject to his furnishing bail bonds and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate, Rohtak, on following conditions:

- (i) he shall appear in the Court on each and every date of hearing;
- (ii) he shall not give any threat or intimidation to the prosecution witnesses;
- (iii) he shall not indulge in any criminal activity;
- (iv) he shall join the investigation as and when directed by the Investigating Officer;

(v) he shall not leave India without prior permission of the
Court; and

(vi) he shall get his presence marked in the local police
station on every Saturday of the week between 11:00
a.m. to 2:00 p.m. so that an eye can be kept on his
movements and he is deterred from indulging in any
criminal activity.

In addition to that the trial Court may impose any term and
condition found suitable to ensure that the petitioner Sachin @ China does
not abscond and interfere in the trial.

In case the petitioner Sachin @ China violates any term and
condition on which the bail has been granted to him, the prosecution
would be entitled to apply for cancellation of bail.

It may be mentioned here that nothing discussed hereinabove
shall have any bearing on the merits of the case.

3.3.2021
Brij

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No