

In virtual Court

CRM-M-21388-2019

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-21388-2019 (O&M)
Date of decision: 22.07.2021

Manu Datana

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. L.M. Gulati, Advocate
for the petitioner.

Mr. Chetan Sharma, AAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.513 dated 09.12.2015 under Sections 302/34 IPC and Section 25 of Arms Act (challan has been presented under Sections 304, 109, 285, 34 IPC and Sections 25/30 of Arms Act), registered at Police Station Indri, District Karnal.

Brief facts of the case are that the FIR was registered against the unknown persons on the basis of statement of Mohtram with the allegations that on 09.12.2015, in the night, at about 1.00 pm, Mehtab, who is his elder brother told him that they are coming by taking Canter No.PB-13-AL-9716 to cast their votes from Punjab, Nawanshehar and they reached at Indri and he should reach

at Yamuna River by taking tractor. Due to heavy fog in the night, the canter went to Bhanu Kheri way towards mine of sand instead of Yamuna Ghat. His brother again made a telephonic call to him that they have reached near mines of sand at Bhanu Kheri. Their vehicle was stopped as its tyre came underneath the sand and then he, while taking tractor, reached to the Yamuna River sand mine i.e. near the canter and took out the canter from the sand and started returning towards village Bhanu Kheri and when they reached at T point Bhanu Kheri, they stopped the tractor on seeing the harrow on the road and started removing the harrow from the road and at that time, firing from the side of field of Bhanu Kheri was done and in the said firing, Khushnood son of Shamshad, resident of Bhalla Majra, who was sitting near the dala of the canter sustained bullet injury and another person Ahsaan son of Shahanvaj, who was sitting in the canter's cabin also sustained gunshot injury. Khushnood died at the spot, due to gunshot injury and after making arrangement of ambulance, Ahsaan was sent to Govt. Hospital, Karnal for the treatment and other persons namely Parvesh and Ali Hassan also sustained injuries due to pallets. When gunshots were being fired upon them, they in loud voice cried that they are going to village Bhalla Majra, UP for casting votes, they are not cow smugglers, but they did not listen to them and continuously fired upon them.

On 02.09.2019, following order was passed by this Court: -

“Learned counsel contends that the petitioner has been arrayed as an accused in the instant FIR on the basis of disclosure statement of co-accused, Vikram. He is in custody since 10.12.2015. All the co-accused including Constable Ravinder, who allegedly fired

gunshot, have been admitted to bail. All the material witnesses including the complainant have been examined. Thus, the bail is being sought on the basis of parity.

On the other hand, learned State counsel, on instructions, initially stated that only a single gunshot was fired. Thereafter, he stated three and ultimately states that more than twenty shots were fired. He further submits that the shots were fired in the air on the provocation given by the deceased and his associates.

The complainant has been heard in person.

Heard.

There is no explanation as to how the accused were present at the time of the incident which allegedly took place at around 2 o'clock in the night. It is also not explained as to how the gunshot which was fired in the air allegedly killed the deceased, Khushnoor and injured two other passengers. After hearing learned counsel for the parties, the Court is prima facie is of the opinion that re-investigation by some independent agency is required in the matter.

However, considering the fact that all the co-accused, particularly, Constable Ravinder, who allegedly fired gunshots have been admitted to bail, the Court, at this stage, is inclined to admit the petitioner on interim bail for a period of six months from the date of his release, subject to his furnishing bail bonds of heavy surety amount with two local sureties of the like amount, to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned. The petitioner shall surrender back to the jail authorities on the date and time to be noticed by the releasing Court. The petitioner shall also surrender his passport, if any, held by him and shall not leave the country without prior permission of the Court.

Further, the State is to show-cause as to why fresh investigation from some independent agency be not carried out in the matter.

List again on 16.10.2019.

Learned counsel for the complainant is also at liberty to file response, if any.

Meanwhile, proceedings before learned trial Court shall remain stayed.

The Registry is directed to convey the order passed by this Court to learned trial Court.”

Thereafter, on 28.02.2020, the order was directed to remain continue, however, due to COVID-19 situation, no proceedings were initiated.

Learned counsel for the petitioner has placed on record the interim order passed by the trial Court to submit that in view of the proceedings of stay granted by this Court, no further proceedings were taken up, though the petitioner is appearing before the trial Court, as per the order dated 03.03.2021. It is further submitted that the petitioner was arrested along with other accused and there are 40 prosecution witnesses, out of 26 PWs have already been examined.

Learned State counsel has filed the custody certificate in the Court today and as per this custody certificate, on the date, when the petitioner was granted interim bail, he had undergone 03 years, 08 months and 21 days. It is submitted that though in the custody certificate, it is noticed that the petitioner has absconded, however, learned counsel for the petitioner, with reference to the order dated 03.03.2021, submits that the petitioner is appearing before the

trial Court.

Learned State counsel, on the basis of affidavit of DSP, Karnal, has not disputed the factual position that 26 PWs have already been examined, however, thereafter, in view of stay of proceedings by this Court, no further proceedings are taken up by the trial Court.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering the fact that in terms of the order dated 02.09.2019, vide which interim bail was granted to the petitioner, no justification is made to continue the stay of proceedings for unlimited period in view of **Asian Resurfacing of Road Agency Pvt. Ltd. and anr. Vs. Central Bureau of Investigation, 2018 (2) RCR (CrI.) 415.**

In view of the above, this petition is allowed and the order dated 02.09.2019, vide which the petitioner was granted interim bail, is hereby made absolute.

[ARVIND SINGH SANGWAN]
JUDGE

22.07.2021
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No