

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

Date of decision : 25.10.2021

1.

CRM-M-5784-2021

Dholu

... Petitioner

Versus

State of Haryana

... Respondent

2.

CRM-M-28199-2021

Subash @ Dholu @ Sonu

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.K.S.Brar, Advocate
for the petitioner in CRM-M-5784-2021.

Mr.Bhupinder Ghai, Advocate
for the petitioner in CRM-M-28199-2021.

Mr.Praveen Bhadu, AAG, Haryana.

Mr.Aditya Sanghi, Advocate
for the complainant.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

This order will dispose of aforesaid two petitions filed under

Section 439 Cr.P.C. for grant of regular bail in FIR no.135 dated 01.07.2020

Arms Act, 1959 at Police Station Ding, District Sirsa.

The first petition, i.e. CRM-M-5784-2021 has been filed by Dholu son of Surjeet Singh @ Jeeta resident of village Sherpur, District Sirsa. The second petition, i.e. CRM-M-28199-2021 has been filed by Subash @ Dholu @ Sonu son of Rajpal resident of Village Sherpura, District Sirsa, Haryana.

The case of the prosecution in brief is that the complainant Rajbeer had got his statement recorded to the effect that on 01.07.2020 said Rajbeer had gone to his brother Ramesh's house and had inquired about Anoop (deceased) on which he was told that Anoop had gone to the water pond with the buffaloes and his brother Ramesh had said that he will take care of the buffaloes and he (complainant) must take care of Anoop. Complainant Rajbeer along with his brother Jaiveer went to the pond to take Anoop. When he reached near the main pond of the village, then he heard Anoop shouting and both the brothers then ran towards him. They saw some persons as named in the FIR including Dholu son of Rajpal and one unnamed person beating up Anoop. Vijay son of Satbeer pulled out a knife and stabbed the deceased on left side of his ribs upon which said Anoop fell down and then all the other accused gave him kick blows. It was also stated that Sanjay had attacked Anoop with a *lathi* on his head and back and on the basis of the same, the FIR was registered.

Learned counsel appearing for the petitioners have submitted that as per the prosecution version, a fatal injury has been attributed to Vijay son of Satbeer. It has been submitted that as far as both the petitioners are concerned, neither they have been attributed any specific injury nor they were alleged of carrying any weapon. It is also pointed out that in fact the

two alleged eye witnesses of the occurrence, as per the prosecution version, were PW-1 Rajbeer son of Jai Karan and PW-2 Jaiveer son of Jai Karan and both the witnesses have been examined and they have not supported the case of the prosecution. Reference has been made to the statement of PW-1 Rajbeer. The relevant portion of the said statement is reproduced hereinbelow:-

“.....We went there and saw that some persons with muffled faces having danda, knife etc. in their hands were causing injuries to my nephew. We raised lalkara and all the muffled faces persons fled away from the spot with their respective weapons. Accused Vijay son of Satbir, Subhash @ Dholu son of Shri Rajpal, Sultan son of Rohtash, Dholu son of Surjeet Singh, Deepak @ Dholu son of Ramesh Kumar (produced through video conferencing) and juvenile Sanjay @ Shanker (facing trial separately in this Court, produced through video conferencing) are not those persons who were causing injuries to my nephew on that day. Thereafter, I and my brother saw that my nephew was crying due to injuries and later on he died.

At this stage, learned Public Prosecutor for state requests that the witness is suppressing the truth and that he wants to cross-examine this witness and that the witness be declared hostile. Heard. Request allowed.”

Reference has also been made to the statement of PW-2 Jaiveer.

The relevant portion of the said statement is reproduced hereinbelow:-

“.....We went there and saw that some persons with muffled faces having danda, knife etc. in their hands were causing injuries to my nephew. We raised lalkara and all the muffled faces persons fled away from the spot with their respective weapons. Accused Vijay son of Satbir, Subhash @ Dholu son of Shri Rajpal, Sultan son of Rohtash, Dholu son of Surjeet Singh, Deepak @ Dholu son of Ramesh Kumar (produced through video conferencing) and juvenile Sanjay @ Shanker (facing trial separately in this Court, produced through video conferencing) are not those persons who were causing injuries to my nephew on that day. Thereafter, I and my brother saw that my nephew was crying due to injuries and later on he died.

At this stage, learned Public Prosecutor for State requests that the witness is suppressing the truth and that he wants to cross-examine this witness and that the witness be declared hostile. Heard. Request allowed.”

It has been argued that both the star witnesses have in fact stated that they had seen some persons with muffled faces who had caused injuries to his nephew and the petitioners were not involved in the same. It has further been argued that the petitioner Dholu son of Surjeet Singh has been in custody since 06.07.2020 and petitioner Subash @ Dholu @ Sonu son of Rajpal has been in custody since 10.07.2020 and in the present case, challan has already been presented and there are 26 witnesses and out of

them two material witnesses have been examined. The trial is likely to take time, more so in view of Covid pandemic. It is also submitted that the petitioners are not involved in any other case.

Per contra learned State counsel and learned counsel for the complainant have opposed the petition for bail and have submitted that in the present case a heinous crime has been committed by the accused persons including the present petitioners. It has also been submitted that in fact recoveries have also been effected from the petitioners inasmuch as stick (danda) has been recovered from Dholu son of Surjeet and *gandasi* from Subash @ Dholu son of Rajpal.

This Court has heard learned counsel for the parties.

A perusal of the prosecution version would show that the fatal injury has been attributed to Vijay son of Satbeer who is stated to have given a knife blow on the left side of the ribs of the deceased. One Shankar is also stated to be armed with *lathi*. The petitioners as per the FIR have neither been attributed any specific injury nor stated to be armed with any weapon. PW-1 Rajbeer and PW-2 Jaiveer, who were the star witnesses and were eye witnesses as per the prosecution version, have not supported the case of the prosecution and have in fact not recognized the petitioners to be the persons who might have caused injuries to the deceased Anoop. The petitioners have been in custody since 06.07.2020 and 10.07.2020, respectively and in the present case there are 26 witnesses in all and the trial would take time inasmuch as 24 witnesses are yet to be examined, more so in view of the Covid pandemic and the petitioners are not stated to be involved in any other cases, and the two star witnesses have already been examined and thus, both the petitions filed by the petitioners are allowed

and the petitioners are ordered to be released on bail on their furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to the fact that they are not required in any other case.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

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

(VIKAS BAHL)
JUDGE

October 25, 2021

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No