

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Date of Decision: 29.04.2021

(i) CRM-M-25252-2020 (O&M)

Vikram @ Vikas

..... Petitioner

Versus

State of Haryana

..... Respondent

(ii) CRM-M-34635-2020 (O&M)

Sumit Phogat

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr.R.S. Rai, Sr. Advocate assisted by
Mr. Karan Pathak, Advocate
for the petitioner (in CRM-M-25252-2020)

Mr. Prithivesh Jerath, Advocate
for the petitioner (in CRM-M-34635-2020)

Mr. Anmol Malik, DAG, Haryana.

SUDIP AHLUWALIA, J.

This common order shall dispose of the above captioned two petitions i.e. CRM-M-25252-2020 titled Vikram @Vikas vs. State of Haryana and CRM-M-34635-2020 titled Sumit Phogat vs State of Haryana, as both of them pertain to the same FIR No. 508 dated 01.11.2019 under Sections 302, 34 IPC and Section 27 of the Arms Act, 1959 registered at Police Station Rajendra Park, District Gurugram. Both the petitions have

been filed under Section 439 of the Cr.P.C. by the petitioners, seeking regular bail in the said FIR.

[2] The FIR was lodged by one Rahul son of Roshan Lal a resident of Village Kadodha, District Jhajjar who had mentioned that on 31.10.2019 his father had gone to his office at Jhajjar at 10 A.M. in the morning; that in the night at about 11.18 PM a phone call from Vikram (Petitioner in CRM-M-25252-2020) resident of Badsa was received in which he informed that the complainant's father had suffered injury at Flat NO. F-54 in India Bulls, Sector 103, Gurugram. The complainant then rushed to Gurugram and saw that his father had already died, from a gun shot injury in the head. He thereafter called the Police on number 100 through his friend's phone. He later made enquiries and learnt that his father had been taken from his Jhajjar office by a lady, namely Sumit Phogat (Petitioner in CRM-M-34635-2020) in the afternoon by making him to board her car at Gurugram office on the pretext that his monetary transactions would be cleared in the Gurugram office, and that after coming to Gurugram the said lady made the complainant's father to consume liquor and, in conspiracy with other persons involved, committed the murder of the said Roshan Lal.

[3] After completion of investigation Final Report/ Challan (Annexure P-3) was submitted by the Police against both the Petitioners on 17.01.2020.

[4] It has been the submission made by Ld. Counsel appearing for both the Petitioners that their clients are innocent and have been wrongly framed by the Complainant with an oblique motive, even though all the circumstances and material connected clearly go to indicate that the victim's death had taken place by accidental firing from his own licensed

pistol, and there is no eye witness nor any direct evidence to substantiate the claim that the Petitioners, in any way, were involved in his murder. To further support this contention Ld. Counsel appearing for the Petitioner Vikram @ Vikas during the course of hearing on 26.11.2020 had drawn attention of the Court to the Forensic Report which is part of the Challan papers.

[5] The aforesaid detailed submissions of Ld. Counsel for the Petitioner Vikram @ Vikas were specifically noted down by this Court in paras 4 & 5 of the zimini order-sheet of the said date (26.11.2020) which are reproduced here for analysis in the light of subsequent progress in trial, and the material which has come forth before this Court in the interregnum -

'4. Ld. Counsel for the petitioner further submits that according to the Forensic Report available on record, traces of gun powder were found on both the hands of the victim himself, which would go to indicate that the sole bullet which caused his death had emanated from the gun, which at the relevant time, was in the own physical custody of the deceased, and the fact that the deceased had consumed a lot of liquor, which can be verified from the PM Report, only augments this submission.

5. Ld. Counsel for the petitioner further draws attention of the Court to the noting in the Final Report/Challan submitted, in which it is mentioned that "inspection of place of incidence was conducted in the presence of SEEN OF CRIME TEAM (CSI TEAM) photography of place of incidence was affected and in their present itself visual site map of place of incidence was prepared. In the presence of SEEN OF CRIME TEAM (CSI TEAM) and FINGER PRINT EXPERT a pistol lying at the place of incidence along with Magazine with 6 live cartridges and empty cartridges were put in a plastic box and was sealed with five seals of R.K. and was taken into police custody. In the

presence of SEEN OF CRIME TEAM (CSI TEAM) blood lying on the place of incidence and Gun Powder swab from right hand and left hand of deceased Roshal Lal was taken separately and kept in a box and the bundle was sealed with four seals of R.K. and was taken into police custody vide memo. Photographs of place of incidence were clicked.'

[6] Having thus noted that the *Scene of Crime Team (CSI Team)* which had reached the scene of crime included a Finger Print Expert, this Court raised a query about the Finger Print examination, if any, of the weapon involved in shooting of the deceased (which was his own licensed pistol). Ld. State Counsel at that juncture sought an adjournment to verify and report whether such Finger Print Examination was done, and if so, what was its result.

[7] Subsequently, a copy of the FPB Report (Annexure R-1) as well as Post Mortem Report (Annexure R-2) of the deceased were placed on record along with the affidavit of the Assistant Commissioner of Police, Udyog, Gurugram on behalf of the State. In the concerned FPB Report (Annexure R-1) dated 10.12.2019, the Incharge of the FPB (SD.Section) State Crime Recod Bureau, Haryana has noted that the lifted chance print and the finger prints of Petitioner Sumit Phogat as well as ten phials skin pieces of deceased Roshan Lal were received for examination. But those were unfit for single digit classification and search, and were also smudged, partial and did not bear sufficient ridge characteristic details, and were, therefore, unfit for comparison. The bottom line therefore is that the Finger Printing analysis does not throw any light whatsoever on the question, as to who could have handled the pistol for shooting at the deceased, or whether the deceased was forcibly caught hold of by either the Petitioner Sumit Phogat or anyone else, as sought to be suggested on behalf of the

prosecution.

[8] It is undisputed that the licensed pistol in question belonged to the deceased himself. It is also the own case of the prosecution that the deceased had consumed or was made to consume liquor in the Flat where the occurrence took place. In such circumstances, when traces of gun powder were found on both the hands of the deceased himself, and the pistol used in the shooting him also belonged to him, and no Forensic evidence such as by way of Finger Printing analysis is available indicating involvement of any other person to show that the single fire arm injury which caused his death as mentioned in the post mortem report (Annexure R-2), when the deceased was undisputedly in an inebriated state, the possibility that the firing happened accidentally by his own hands from his licensed pistol cannot be outrightly discarded.

[9] Admittedly, the Complainant Rahul is not an eye witness to the occurrence nor PW-2, namely Sunder Singh who happens to be a relative of the deceased Roshan Lal. The statements given by both these persons as PWs No. 1 & 2 in the trial Court have been placed before this Court which clearly show that neither of them were present at the place of occurrence, nor there is any explanation as to on what basis or from which source the Complainant had come to know that the present Petitioners were instrumental in causing 'murder' of his father. It has transpired from the own examination of the Complainant as recorded on 15.04.2021 that the place of occurrence is about 55/60 Kilometers from his house and it took him about an hour to reach it at about 12.15 midnight, ostensibly after getting the telephonic call from Petitioner Vikas (at 11.18 P.M. as mentioned in the original FIR). In this view of the matter, there is also substance in the

submission raised on behalf of the Petitioners, that if they were involved in killing the deceased, then the Petitioner Vikas would not have himself informed the Complainant situated so far away about the injuries suffered by his father. Ld. State Counsel has been unable to draw attention to any material collected during investigation or the evidence led before the trial Court through the private witnesses examined, including the complainant himself which would indicate active involvement of either of the Petitioners in killing the deceased, or any existing circumstances which could logically have the effect of negating the possibility of the victim having accidentally shot himself from his own licensed weapon in an inebriated condition, when gun powder traces were admittedly found on both his hands, and no Forensic evidence nor direct ocular evidence is available to show any overt act on the part of either of the Petitioners which could have caused the victim's fatal fire arm injury.

[10] By now both the Petitioners have remained in detention for 1½ years as according to the Complainant himself in his cross-examination on 23.03.2021, they had been arrested by the Police at about 04:05 A.M. on 01.11.2019 itself. Up till now only two private witnesses, namely the Complainant - Rahul and PW-2 Sunder Singh have been examined. The evidence of as many as 38 more witnesses cited in the challan is yet to be recorded. Almost all of these remaining witnesses are either Police Officers, or Forensic/ Medical Experts or otherwise official witnesses. Due to onset of the second wave of Covid-19 Pandemic, Trial Court proceedings are now likely to take a substantial time for their completion. This Court is, therefore, of the opinion that at this stage further detention of the Petitioners for an indefinite period in the given circumstances is not called for.

[11] They are, therefore, now ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

[12] It is, however, clarified that no part of the observations noted in this order shall have any bearing on the merits of the case as a whole, and the Ld. Trial Court shall not be influenced in any manner by such observations in finally deciding the matter after completion of trial.

[13] Both the petitions stand disposed off.

29.04.2021

Satyawan

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No

(SUDIPAHLUWALIA)
JUDGE