

CRM M-29128 of 2020 (O&amp;M)

Date of Decision: 08.10.2021.

Chanan Singh @ Chaan and another

.....Petitioners

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU**Present: Mr. Amit Choudhary, Advocate,  
for the petitioners.

Mr. Kiran Pal Singh, AAG, Haryana.

Dr. Surya Parkash, Advocate,  
for the complainant.**MAHABIR SINGH SINDHU. J.**

Present second petition has been filed under Section 439 of Code of Criminal Procedure for grant of bail pending trial in case FIR No. 197 dated 21.04.2020, under Sections 120-B and 323 IPC (Sections 302 and 212 IPC) and Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 were added subsequently and Section 307 IPC deleted, registered at Police Station City Fatehabad, District Fatehabad.

2. The law was set into motion on the statement of Palwinder Singh son of deceased (Kulwant Singh) who stated that on 21.04.2020 at about 9.00 am, he and his father were going on their respective two wheelers to Auto Market Fatehabad. When they reached Sandhu Hospital, Street No.1, tractor bearing registration No. HR-22-G-3509 was seen parked in front of Sandhu Hospital. Sonu son of Gogi was on the driver seat. He drove the tractor towards wrong side and with intention to kill his father, ran the tractor over the scooty of his father. On

raising alarm, people gathered on the spot. Sonu alighted from the tractor. Dara Singh brother of accused Sonu came on the spot on a motor cycle. Thereafter, both of them fled away from the spot. He got his father admitted in the hospital.

3. Contends that neither as per the allegations in the FIR; nor before learned trial Court, complainant PW-3 (Palwinder Singh) in his examination-in-chief stated that petitioners were present at the time of occurrence. Also contends that as a matter of fact, there is no material available with the prosecution regarding the complicity of the petitioners; rather they have been falsely implicated by the investigating officer. Further contended that prosecution has moved an application under Section 319 of Code of Criminal Procedure for summoning of Dara Singh as an additional accused, who was declared innocent by the Police during investigation and as such the trial is likely to take sufficient long time.

4. Further contends that both the petitioners are in custody since 24.04.2020.

5. Reference has also been made to the judgments (i) Raghbir Singh vs. State of Rajasthan and others CRA Nos. 82 to 83 and 778 of 2005 decided on 29.08.2011 and; (ii) Jayendra Saraswathi Swamigal vs. State of Tamil Nadu 2005(1) RCR (Criminal) 629 of Hon'ble Supreme Court to the effect that petitioners cannot be prosecuted for the offence punishable under Section 302 IPC and at best they can face trial for the ancillary offences.

6. On the other hand, learned State counsel opposed the prayer and submitted that presence of petitioners at the time of occurrence is duly visible in the CCTV footage recovered during investigation and as such, they have been rightly nominated in the present case. The investigating officer found both the petitioners involved in commission of the offence and thus, their role is duly substantiated at this stage. Again contended that both the petitioners have been

charge-sheeted under Section 302 IPC apart from other offences including Section 3 of the Scheduled Castes and Scheduled Tribes Act.

7. Also contends that complainant while appearing as PW-3 duly supported the case of the prosecution and specifically named the present petitioners along with other co-accused.

8. Learned counsel for complainant while supporting the arguments raised by learned State counsel further submitted that petitioners are openly extending threats through their sources to the complainant and in case they are released on bail, trial shall be hampered.

9. Heard both sides and perused the record.

10. There is no doubt that in the FIR, petitioners were not named by the complainant, but while appearing as PW-3, in his examination-in-chief, deposed as under:-

*“Accused Kuldeep alias Sonu in criminal conspiracy with his brother Dara Singh, Chanan Singh and Balwinder Singh again stated Arwinder Singh had crushed my father with his tractor in order to kill him. My father Kulwant Singh died during treatment on 21.04.2020.”*

11. Now the trial is pending for 09.11.2021. After noticing the apprehension of the complainant, this Court cannot ignore the fact that in case petitioners are released on bail, they may hamper the prosecution case. The judgments cited on behalf of the petitioners are not helpful for the reasons:--

- (i) **Raghubir Singh’s case (supra)** pertains to the appeals arising out of the convictions recorded by the learned trial Courts and not at the stage of bail.

- (ii) In the case of **Javendra Saraswati Swamigal's case** (supra), material against the accused was the confessions of two co-accused and one of them retracted later on and moreover no other *prima facie* evidence was available to show his involvement. Apart from that, charge-sheet was yet to be filed by the police.

In the present case, PW3 has specifically named the petitioners in his examination-in-chief before learned trial Court and moreover, their presence is visible on the spot in CCTV footage recovered during the investigation. Undisputedly, the charges have already been framed against the petitioners for the offences punishable under Sections 120B IPC, Sections 302 read with Section 120-B IPC and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 by learned trial Court on 16.04.2021, hence, no case for bail pending trial is made out in favour of the petitioners.

12. In view of the above, this Court has no option except to dismiss the present bail application.

13. Ordered accordingly.

14. Learned trial Court will proceed with the matter expeditiously without any unwanted adjournments.

15. Nothing observed herein shall be construed as an expression of opinion on merits of the case.

08.10.2021.

SN/sanjay

(MAHABIR SINGH SINDHU)  
JUDGE

**Whether speaking/reasoned : Yes/No**  
**Whether Reportable: Yes/No**