

CRM-M-31763-2020 (O&M)&

CRM-M-39474-2020(O&M)

-:1:-

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

1. CRM-M-31763-2020 (O&M)

Jaibir @ Pappu Yadav

..... Petitioner

Versus

State of Haryana

..... Respondent

2. CRM-M-39474-2020(O&M)

Sumer and another

..... Petitioners

Versus

State of Haryana

..... Respondent

Date of decision : 25.3.2021

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

Present : Mr.Keshav Pratap Singh, Advocate
for the petitioners in both petitions.

Mr.Tanuj Sharma, AAG, Haryana.

Mr.Nagar Singh, Advocate for
Mr.A.S. Shera, Advocate
for the complainant.

H.S. MADAAN, J.

CRM-M-31763-2020 (O&M)&

CRM-M-39474-2020(O&M)

-:2:-

Vide this order, I shall dispose of two petitions for grant of pre-arrest bail i.e. **CRM-M-31763-2020** filed by petitioner Jaibir @ Pappu Yadav and **CRM-M-39474-2020** filed by petitioners – Sumer and Satpal Singh, all of them accused in FIR No.287 dated 21.8.2020, under Sections 148, 149, 307, 323, 325, 506 IPC and Section 25 of the Arms Act, registered with Police Station Ballabgarh Sadar, District Faridabad.

Briefly stated, the facts of the case as per the prosecution story are that on 20.8.2020 at about 7:00 p.m. while the complainant Ajay Singh along with his friend Surender was having a stroll near Dharam Kanta of his village, then assailants travelling in a white colour Swift car and riding 4-5 motorcycles arrived at the spot; they abused the complainant and opened indiscriminate fire upon him from pistols; the bullets missed the legs and chest of the complainant narrowly; Surender started running towards the village, whereas the complainant ran on PWD road, Pyale but the assailants kept on firing shots from behind; they were successful in surrounding the complainant and they attacked him with lathies, dandas, iron rods; they further fired shots from pistols carried by them, which brushed against body of the complainant; the total shots so fired were 10-12 in number; the injured Ajay Singh was hospitalized, where he was medically treated and medico-legally examined. On written complaint submitted by him against Jaibir @ Pappu Yadav son of Ranbir, Joginder son of Ranbir and other three brothers and sons, Karamchand son of Jogi, Sumer son of Gopi Chand, Satpal son of Desh Raj, Narender son of Jagdish, Kalu son of Kaptan and Sonu brother of Kalu besides other 10-12 persons, formal FIR

was recorded. In the complaint, the complainant had contended that while assaulting him, the assailants were saying that they had been sent by Jaibir @ Pappu Yadav and they would finish off the complainant on that day and they were further saying that the complainant cannot hurt/ruin Jaibir @ Pappu Yadav.

After being nominated in the FIR, apprehending their arrest in this case, petitioners/accused had approached the Court of Sessions seeking grant of pre-arrest bail by filing applications, which were assigned to learned Additional Sessions Judge, Faridabad. However, their such applications were dismissed by the Court of learned Additional Sessions Judge, Faridabad vide separate orders dated 21.9.2020 and 10.11.2020, respectively. As such, they have approached this Court asking for similar relief by way of filing separate petitions, which are being opposed by the State counsel and counsel for the complainant.

I have heard learned counsel for the parties besides going through the record.

Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from arrest and custodial interrogation.

Here petitioners Jaibir @ Pappu Yadav, Sumer and Satpal Singh are specifically named in the FIR; Although Jaibir @ Pappu Yadav is not alleged to be physically present at the spot and taken part in the incident but then as per the prosecution version, he was the master mind in execution

of the incident since while assaulting the complainant, the assailants were saying that they had been sent by Jaibir @ Pappu Yadav and complainant could not harm him in any way. It being so, Jaibir @ Pappu Yadav cannot come up with a straight face and say that he has nothing to do with the incident and because he was not physically present at the spot and had not taken part in the actual assault on the complainant, as such he is not guilty. Although according to counsel for the petitioners, at the relevant time, petitioner Jaibir @ Pappu Yadav was admitted for check up in Ortho Super Speciality Hospital, Faridabad but that does not absolve him of the criminal liability because taking part in conspiracy and planning of incident makes the said person equally liable along with the criminals actually causing injuries.

Another argument advanced on behalf of the petitioners was that the FIR has been lodged on account of political rivalry because Pinki Yadav wife of petitioner Jaibir @ Pappu Yadav had contested election against Babita belonging to family of complainant. However, I am not much convinced by this contention. No person would go to the extent of getting shots fired at him just to involve some other person in a criminal case. Nevertheless photographs of the injured placed on record by counsel for the complainant show serious and grave injuries suffered by him, which on the face of it cannot be termed to be self suffered or having been caused by friendly hand. The petitioners cannot take advantage of the fact that the complainant had not suffered any bullet injury. If the complainant had a miraculous escape from being hit by bullets, the petitioners cannot get any

benefit by default. It has to be taken into mind that as per the investigation carried out, a live cartridge and empty shell had been recovered from the spot. If no shots had been fired from the pistols, then there was no question of any live cartridge or empty shell being found from the spot.

Another argument advanced by learned counsel for the petitioners was that petitioners Sumer and Satpal Singh were not present at the spot at the relevant time and they were at their homes as per CCTV footage and that though the investigating agency was asked to get that CCTV footage verified but it has not so done, thus there is nothing to show that anything is wrong with the CCTV footage and benefit should go to the accused. He has further contended that petitioners have since joined the investigation and no recovery is to be effected from them, therefore their custodial interrogation is not required and they be granted pre-arrest bail.

Whereas, learned State counsel and counsel for the complainant have contended that though the CCTV footage has been sent to the FSL but report therefrom has not been received. However, because authenticity of CCTV footage is yet to be established, therefore, the petitioners cannot take advantage of the same and set up plea of alibi when they are specifically named in the FIR.

As regards their having joined the investigation, in terms of the directions issued to them by this Court while granting interim bail to them, learned State counsel has contended that though they have joined the investigation but not rendered full cooperation inasmuch they have not disclosed all the material facts within their knowledge and their custodial

interrogation is necessary.

After hearing the rival contentions, I find that petitioners cannot take advantage of CCTV footage at this stage, the genuineness of which is yet to be ascertained. The investigating agency is said to have sent the CCTV footage to FSL for finding its genuineness and it cannot be faulted if report has not been received from the said laboratory so far and no adverse inference can be drawn against the prosecution for the said reason.

As far as petitioners having joined the investigation, since as informed by the State counsel, they have not disclosed all the material facts within their knowledge, therefore, their custodial interrogation is found to be necessary and essential for complete and effective investigation so as to find out as to how the incident was planned and executed, from where the weapons and ammunition used in the incident were procured, from where the vehicles used by the assailants in coming to the spots were arranged and part taken by each of the assailant in the incident. In case custodial interrogation of the petitioners is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely, which is not called for.

Furthermore, the petitioners come out to be habitual criminals inasmuch as petitioner Jaibir @ Pappu Yadav is said to be involved in another FIR No.16 dated 18.1.2007, under Sections 380, 420, 467, 468, 471, 120-B IPC, PS Camp Palwal, District Faridabad, Now District Palwal, petitioner Sumer is said to be involved in FIR No.281 dated 3.8.2006, under Sections 148, 149, 323, 325, 506 IPC and SC&ST Act, PS Sadar

CRM-M-31763-2020 (O&M)&

CRM-M-39474-2020(O&M)

-:7:-

Ballabgarh, District Faridabad, FIR No.250 dated 31.10.2009, under Sections 148, 149, 307, 325, 506 IPC, PS Sadar Ballabhgarh, District Faridabad, FIR no.628 dated 1.12.2019, under Sections 148, 149, 307, 323, 341, 506 IPC, PS Sadar Ballabgarh, District Faridabad and FIR No.188 dated 24.5.2020, under Sections 306/34 IPC, PS Sadar Ballabgarh, District Faridabad and petitioner Satpal Singh is said to be involved in FIR No.281 dated 3.8.2006, under Sections 148, 149, 323, 325, 506 IPC and SC&ST Act, PS Sadar Ballabgarh, District Faridabad, FIR No.250 dated 31.10.2009, under Sections 148, 149, 307, 325, 506 IPC, PS Sadar Ballabhgarh, District Faridabad, FIR no.628 dated 1.12.2019, under Sections 148, 149, 307, 323, 341, 506 IPC, PS Sadar Ballabgarh, District Faridabad.

In case of *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Finding no merits in the petitions, the same stand dismissed accordingly.

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

**(H.S. MADAAN)
JUDGE**

25.3.2021
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1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**