

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

CRM-M-43142-2021 (O&M)
Date of Decision:- 16.12.2021

Kavita and another ... Petitioners

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. A.P.S. Deol, Senior Advocate with
Mr. Himmat Singh Deol, Advocate for the petitioners.

Mr. Rajiv Sidhu, DAG, Haryana
assisted by SI Vidya Sagar.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. Kavita and Sonu have approached this Court seeking grant of regular bail in a case registered against them vide FIR No. 122 dated 29.5.2021 under Sections 302, 307, 216, 323/34 IPC and under Section 25 of the Arms Act, 1959 at Police Station Kasola, District Rewari.
2. The FIR was lodged at the instance of Subhash wherein it is alleged that on 29.5.2021 at about 2-2:30 p.m., he alongwith his sons Vijay and Brahmparkash and also his nephew Bhim Singh were present at their house. Around that time, they heard his brother Duli Chand saying that his sons Bir Singh and Bhupinder @ Mogli and their wives Sonu and Kavita respectively are beating him and also his wife. Upon hearing the said alarm, the complainant and his nephew Bhim Singh went to the house of his brother

Duli Chand where they saw Bhupinder and his wife Kavita and Sonu wife of Bir Singh were quarreling with complainant's brother Duli Chand and complainant's sister-in-law. When the complainant tried to reason out, Bir Singh started giving beatings to complainant's nephew Bhim Singh. It is alleged that Kavita gave a fist blow on complainant's face. On account of said commotion, complainant's sons namely Vijay and Brahmparkash also came there so as to rescue them. When they tried to intervene, Kavita stated that they (complainant's side) will not understand and that they be filled with 'brass'. It is alleged that Kavita brought two pistols from inside and that she handed one of the said pistols to Bhupinder, she kept the other one with herself. Bir Singh already had a weapon. Kavita and Sonu caught hold of Vijay by his arms while Bhupinder fired a shot at him. Bir Singh is also stated to have fired at Vijay. Thereafter, Bir Singh and Bhupinder resorted to indiscriminate firing upon the complainant, Brahmparkash and Bhim Singh. While the complainant and his nephew Bhim Singh escaped unhurt, Brahmparkash sustained a bullet injury. The complainant and his nephew Bhim Singh shifted Brahmparkash and Vijay to hospital at Rewari where Vijay was declared dead while Brahmparkash was undergoing treatment. It is, thus, alleged that Bhupinder, his wife Kavita, Bir Singh, his wife Sonu had fired at his sons Vijay and Brahmparkash with unlicensed weapons, on account of which Vijay had died.

3. The learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in the present case simply in order to pressurize the entire family and that the petitioners who are wives of the co-accused Bhupinder and Bir Singh respectively had not participated in any manner in

the alleged occurrence. It has further been submitted that the police had collected CCTV footage of the place of occurrence which would show that infact it is the complainant's side which was the aggressor. The learned counsel has today shown to the Court some photographs stated to have been printed from the CCTV footage showing the complainant Subhash attacking Sonu with a stick and also inflicting an injury to Bir Singh with a stick. The learned counsel has referred to another photograph to contend that Kavita is seeing running away from the spot to save her life. It has also been submitted that infact the CCTV footage indicates that it is the complainant's side which had come armed with pistols and had attacked the accused and it was in self-defence that the deceased and Brahmparkash sustained injuries.

4. The learned counsel has next referred to the statements of several eye-witnesses recorded in terms of Section 161 Cr.P.C. including that of father of the co-accused Bir Singh and Bhupinder wherein the petitioners are not attributed any such incriminating role as is alleged in the FIR. The learned counsel has first of all referred to the statement of injured Brahmparkash (Annexure P-2), the relevant extract of which reads as follows :-

“On 29-5-2021, I was present at my house and on hearing the noise of quarrel from the house of my uncle (Tau) I went there. There my uncle's son Bir Singh, Mogli, Sonu and Kavita were quarreling with my uncle (Tau) Dulichand, my aunt Bimla and their son Bhim Singh. My father Subhash was trying to interfere. On hearing the noise of quarrel, my brother Vijay also reached the spot, thereafter, we both the brothers tried to interfere, Bhupender @ Mogli my Tau's son brought one country made 'katta' and pistol from his bed and as soon as Bhupender @

Mogli came out, he fired shot at my brother Vijay and me and ran away from the spot.”

5. The learned counsel has next referred to the statement of Constable Parveen Kumar (Annexure P-3), who had been deputed as a body guard with co-accused Bir Singh, who has described the occurrence in the following manner :-

“When they started interfering, Bhupender @ Mogli brought one country made ‘katta’ and one country made pistol from his bed and as soon as he (Bhupender @ Mogli) came out, he fired shot at Vijay and Brahmparkash and fled away from the spot.”

6. Duli Chand (father of co-accused Bir Singh and Bhupinder @ Mogli), in his statement (Annexure P-4) recorded in terms of Section 161 Cr.P.C., stated to the following effect :-

“On this my son Bhupender @ Mogli brought one country made ‘katta’ and pistol from his bed and as soon as Bhupender @ Mogli came out, he fired shot at Vijay and Brahmparkash and ran away from the spot.”

7. The learned counsel has, thus, submitted that the statements of the aforesaid witnesses clearly shows that the petitioners did not have any active role to play in the alleged occurrence apart from the fact that they might have been quarreling with their father-in-law Duli Chand and mother-in-law Bimla and that in these circumstances, the petitioners deserve the concession of bail.
8. Opposing the petition, the learned State counsel has submitted that since both the petitioners are specifically named in the FIR and apart from the allegations that Kavita had brought pistols from inside the house and had

handed one of the said pistols to Bhupinder, it is also alleged that the petitioners had held Vijay from his arms while Bhupinder fired at him leading to his death. The learned counsel has submitted that the veracity of the statements of Brahmparkash, Constable Parveen Kumar and Duli Chand will be tested and established during the course of trial and that no reliance can be placed upon the same for the purpose of holding that the petitioners had not participated in the occurrence. The learned State counsel has, however, informed that the petitioners as on date have been behind bars since the last about 6½ months and that out of the cited 36 prosecution witnesses, examination-in-chief has been recorded of 1 prosecution witness only. It has also been informed that the petitioners are not involved in any other case.

9. I have considered rival submissions addressed before this Court.
10. It is evident that Vijay, son of the complainant, had died on account of firearm injuries and that Brahmparkash, another son of complainant, has sustained firearm injury. Although, as per the FIR both the petitioners have been attributed a role to the effect that they had held the deceased by his arms and co-accused fired at him and that the petitioner Kavita is alleged to have handed over a pistol to Bhupinder, but the said allegations are virtually negated from the statements of the witnesses recorded in terms of Section 161 Cr.P.C. It is worth noticing that apart from the statements of brother and father of the co-accused Bir Singh and Bhupinder, statement of a police official - Constable Parveen Singh who had been deputed as body guard with Bir Singh co-accused himself has also been recorded who has also not stated in support of the allegations against the petitioners as levelled in the

FIR. Both the petitioners are ladies and have been behind bars for a substantial period of 6½ months and are not stated to be involved in any other case. Conclusion of trial is likely to consume time inasmuch as examination-in-chief of only 1 PW out of the cited 36 PWs has been examined so far. In these circumstances, further detention of the petitioners will not serve any useful purpose.

11. The petition, as such, is accepted and the petitioners are ordered to be released on regular bail on their furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

16.12.2021

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No