

CRM-M-51316-2019 and
CRM-M-21908-2020

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

(1) **CRM-M-51316-2019**

Jogender @ Joga

...Petitioner

Versus

State of Haryana

...Respondent

(2) **CRM-M-21908-2020**

Rakesh

...Petitioner

Versus

State of Haryana

...Respondent

Date of Decision:-8.2.2021

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

Present: **Mr.Rajat Mor, Advocate
for the petitioner in CRM-M-51316-2019.**

**Mr.R.S. Rai, Senior Advocate with
Mr.Gautam Dutt, Advocate
for the petitioner in CRM-M-21908-2020**

**Mr.Pratham Sethi, Advocate
for the complainant.**

Mr.Karan Garg, AAG, Haryana.

H.S. MADAAN, J.

Cases taken up through video conferencing.

By this order, I intend to dispose of two petitions i.e. **CRM-M-51316-2019** filed by petitioner Jogender @ Joga and **CRM-M-21908-2020** filed by petitioner Rakesh, who are accused in FIR No.79 dated 21.2.2018 under Sections 302, 449 and 34 IPC and 25 of Arms Act

(Subsequently Section 216 IPC was added), registered with Police Station Kharkhoda, District Sonipat.

The FIR in question was registered on the basis of written complaint submitted by complainant – Samundar son of Maha Singh, resident of Asrafpur Matindu, an Ex-Army personnel, presently working in Security Branch of Delhi Telephone Exchange. He *inter alia* stated that he had three children i.e. two sons and a daughter; his elder son Deepak was engaged in avocation of agriculture and used to sleep in the cattle-shed in the fields, whereas their residential house is situated in the village abadi; on 20.2.2018 at about 9:00 p.m. Deepak after having meals from home went to sleep in the cattle-shed, however, on the next day in the morning at about 5:00 a.m., when complainant went to the cattle-shed, he found the gate open; the complainant went inside and saw that his son Deepak was lying in pool of blood having a bullet injury and he was dead; the complainant found two empty shells lying on the floor of the room, whereas a magazine of cartridges was there on the cot of Deepak. In that very written complaint, complainant mentioned that Shiksha daughter of Sudhir used to talk and meet with his son Deepak and for that very reason Sudhir, his brother Jogender @ Joga along with Rakesh and Vikas had killed Deepak and an action be taken in the matter.

After registration of the FIR, investigation in the case started. The Investigating Officer visited the place of incident and got it photographed. The rough site-plan of the place of occurrence was prepared. Statements of witnesses were recorded. The postmortem examination on the dead body of Deepak was got conducted. The call

details of mobile phone were collected. Accused Shiksha and Vikas were arrested in this case on 27.2.2018. Both of them were interrogated. Vikas suffered a disclosure statement and in pursuance thereof got .315 bore rifle recovered from the house of Bhup Singh situated at village Chara, District Jhajjar. Bhup Singh was arrested in this case for the offence under Section 216 IPC on 5.3.2018. The suspects mentioned in the FIR, namely Sudhir, Jogender @ Joga and Rakesh were joined in the investigation. On completion of investigation, final report under Section 173 Cr.P.C. was filed on 22.5.2018 against Shiksha for offence under Section 302 IPC and against Vikas for offence under Section 216 IPC and Sections 27 and 30 of the Arms Act..

Thereafter vide order dated 9.7.2018 passed by ADGP (Crime), Panchkula, investigation of this case was transferred to State Crime Branch, Gurugram. Supplementary statement of Samundar was recorded. Sudhir, Jogender @ Joga, Rakesh and Vikas were joined in the investigation on 30.7.2019 and they were arrested in this case since investigation revealed that they had hatched a conspiracy to commit murder of Deepak and had gone to the spot in Scorpio vehicle belonging to Jogender @ Joga accused and such vehicle was being driven by him to the place of incident where Deepak was murdered by Vikas in presence of Sudhir, present petitioner and Rakesh. Shiksha was also present at the time of occurrence. On completion of investigation supplementary challan against Sudhir, Jogender @ Joga, Rakesh, Vikas and Bhup Singh was filed in the Court on 16.10.2019.

In that way two challans have been filed in this case, first

against Shiksha for the offence under Section 302 IPC and against Vikas for offence under Section 216 IPC and Sections 27 and 30 of Arms Act and second in the form of supplementary challan against Sudhir, Jogender @ Joga, Rakesh, Vikas and Bhup Singh. In the first challan, the story set up by the prosecution is mainly on the basis of disclosure statement made by Shiksha and other evidence collected, which is that marriage of Shiksha was fixed for 21.2.2018, however, she remained in telephonic contact with Deepak deceased; on 20.2.2018 during the telephonic conversation between two of them, Deepak told Shiksha to marry him or else he would die; on that night at around 2:00 a.m. in the early morning, at the asking of Deepak, Shiksha went to meet deceased in his court-yard taking his brother's licensed rifle along with her since Deepak had told her that if they could not get married, then they would die together; when she reached court-yard of Deepak, there she had a fight with him in which Deepak slapped her, hurling abuses, holding out threats that in case Shiksha did not marry him, then he would kill all her family members; at this Shiksha put rifle on chest of Deepak and pressed trigger due to which Deepak fell down on the floor; thereafter Shiksha tried to shoot herself but could not do so. Thereafter, she returned home, kept the rifle in a room of her house and informed her mother about the whole incident; the mother of Shiksha told Vikas about the occurrence; Vikas came home, took away rifle and empty shell and then left. After arrest of Shiksha and Vikas in this case, .315 bore rifle and empty shell used in the incident were recovered.

In the supplementary challan the story set up by the

prosecution is that it was Vikas, who had fired the fatal shot at Deepak from his licensed rifle in presence of the common intention/common objective of all the accused.

Both the petitioners/accused had filed applications for bail before Court of Sessions at Sonapat but were unsuccessful there, as such they have approached this Court seeking similar relief by filing of the petitions, notices of which have been issued to the respondent - State, which put in appearance through State counsel. The complainant has also appeared through counsel.

I have heard learned counsel for the petitioners, learned State counsel and counsel for the complainant besides going through the record.

In this case, two different versions of the incident have emerged. During the course of investigation carried out after registration of the FIR, it was concluded that murder had been committed by Shiksha, using the rifle of her brother Vikas, as such Shiksha was forwarded to face trial for committing murder of Deepak and Vikas for the offence under Section 216 IPC as well as under Sections 27 and 30 of Arms Act for allowing his licensed weapon to be used for commission of offence by Shiksha. After filing of challan in the Court, an SIT was constituted by order of ADGP (Crime), Panchkula, which investigated the matter and reached at entirely different conclusion that as a matter of fact, the murder had been committed by Vikas in pursuance of the common intention of all the accused. Now the question arises whether in this scenario with two different versions of the incident, petitioners are entitled to grant of regular bail or not.

First taking up CRM-M-51316-2019 filed by petitioner/accused Jogender @ Joga. Though in the first challan filed against Shiksha, sufficient evidence was not found against him to connect him with the crime but as far as the investigation carried out by SIT for the second time, his involvement was found to be there. Though he is not shown to have fired shot at the deceased but then the version goes, when on the fateful day, Shiksha was found missing from home, then his father along with Jogender @ Joga (present petitioner), Vikas and Rakesh had gone to cattle-shed of deceased in a Scorpio vehicle bearing registration No.HR79/6908 belonging to present petitioner and being driven by him and then on reaching the spot, Vikas had fired a shot at Deepak, killing him on the spot. Thus, an active involvement of Jogender @ Joga in the incident comes out to be there. Furthermore, petitioner Jogender @ Joga is said to have been granted interim bail by the Court on his moving application that he was to undergo heart surgery. However, later on Additional Sessions Judge, Sonipat passed a detailed order dated 31.7.2020 recording contention of learned counsel for the complainant that after getting interim bail, accused Jogender @ Joga was constantly threatening the complainant and his family members to compromise the matter with regard to murder of his son Deepak. A video recording in that regard was also played in the Court. Learned Additional Sessions Judge, Sonipat observed that counsel for accused Jogender @ Joga could not give any explanation as to why he took Panchayat to the house of the complainant to pressurize him, therefore Jogender @ Joga was ordered to be produced in the Court to give explanation, if any, observing that failing

that interim bail granted to him would be dismissed. To redress the apprehension of complainant with regard to threat of his life at the hands of accused Jogender @ Joga, Superintendent of Police, Sonipat was directed to provide police protection to the complainant.

Under the circumstances, the apprehension expressed by the State counsel that if released on bail there is possibility of petitioner Jogender @ Joga trying to tamper with the prosecution evidence by giving threat or inducement to the prosecution witnesses is to be taken with all the seriousness more particularly when petitioner Jogender @ Joga is said to have a past criminal record inasmuch as he is said to be involved in other criminal cases i.e. FIR No.273 dated 6.6.2014, under Sections 307, 323, 452, 506 and 34 IPC, P.S. Kharkholda and FIR No.262 dated 28.5.2017, under Sections 420, 467, 468, 471, 120-B IPC, P.S. Kharkhoda. Therefore, I do not find it proper and appropriate to grant benefit of regular bail to the petitioner Jogender @ Joga at this stage when material witnesses of the prosecution are yet to be examined.

Therefore, CRM-M-51316-2019 filed by petitioner/accused Jogender @ Joga stands dismissed.

Now coming to CRM-M-21908-2020 filed by petitioner/accused Rakesh. The role attributed to him is being part of conspiracy showing common intention/having common object of committing murder of Deepak. But his active involvement in the incident does not come out to be there. Though he is shown to be involved in another criminal case bearing FIR No.273 dated 6.6.2014, under Sections 307, 323, 452, 506 and 34 IPC, P.S. Kharkholda but as he is in custody

since 31.7.2019 and the trial is still at the initial stage, I find it proper and appropriate to grant concession of regular bail to him.

Accordingly, the **CRM-M-21908-2020** stands allowed. The petitioner namely Rakesh is ordered to be released on bail during the pendency of the trial, subject to his furnishing bail bonds and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate, Sonipat, on following conditions:

- (i) he shall appear in the Court on each and every date of hearing;
- (ii) he shall not give any threat or intimidation to the prosecution witnesses;
- (iii) he shall not indulge in any criminal activity;
- (iv) he shall join the investigation as and when directed by the Investigating Officer;
- (v) he shall not leave India without prior permission of the Court; and
- (vi) he shall get his presence marked in the local police station on every Saturday of the week between 11:00 a.m. to 2:00 p.m. so that an eye can be kept on his movements and he is deterred from indulging in any criminal activity.

In addition to that the trial Court may impose any term and condition found suitable to ensure that the petitioner Rakesh does not abscond and interfere in the trial.

In case the petitioner Rakesh violates any term and condition

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on which the bail has been granted to him, the prosecution would be entitled to apply for cancellation of bail.

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

8.2.2021
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No