

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-53913-2019 (O&M)

Date of decision: 24.11.2021

Ajay @ Bittu

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Nagar Singh, Advocate for
Mr. A.S. Virk, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

Mr. Vikrant Rana, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.104 dated 11.03.2016 under Sections 148, 302, 307, 333, 353, 186, 120-B, 212, 149 IPC and Section 25 of Arms Act, registered at Police Station Ganaur, District Sonapat.

On 09.11.2021, following order was passed by this Court: -

“During the course of arguments, learned counsel for the petitioner has submitted that vide order dated 10.03.2021 passed in CRM-M-42678-2020, the petitioner was transferred from District Jail, Rohtak to District Jail, Gurugram as it was admitted

by the State that there is every possibility of any untoward incident at any point of time with the petitioner and while allowing the said petition, the petitioner was also directed to furnish an undertaking before the trial Court that he will have no objection for conducting of cross-examination in his absence.

Learned counsel further submitted that in another FIR, when the petitioner was produced in Court at Sonipat, while he was sitting the custody vehicle, Constable Mahesh opened fire at him with a country made pistol and the petitioner suffered fire arm injury on his head and other part of this body and in this regard, FIR No. 191 dated 18.03.2021 under Section 307 IPC read with Section 25 of the Arms Act was registered against said person. It is also submitted that the present relates to an incident of 11.03.2016, whereas other FIRs, in which the petitioner is referred to as an accused, relate to subsequent years and the petitioner was nominated on the disclosure of other accused.

List again on 24.11.2021.

In the meantime, learned State counsel is directed to file a specific affidavit of the Investigating Officer on the following points:

- (a) Whether the petitioner is nominated as an accused in other FIRs by the eye-witnesses or on the basis of the disclosure of other accused;*
- (b) The status of investigation in case/FIR No. 191;*

(c) Number of witnesses examined so far in the present case, especially if any private witness is yet to be examined.

(d) Along with the affidavit, the report of the jail doctor regarding mental and physical health condition of the petitioner be also filed.”

In pursuance of the aforesaid order, status report by way of affidavit of SI Anand Singh, CIA-II Staff, Sonipat has been filed in the Court today and the same is taken on record. With regard to query No.1, it is stated that in some cases, the petitioner is named by the complainant and in some cases, his name surfaced on the basis of disclosure statement of co-accused. Apart from this, it is stated that there are three more FIRs; two under Section 42 of Prisoners Act and 01 FIR under Section 174-A IPC. With regard to query No.2 regarding status of investigation in FIR No.191 dated 18.03.2021, in which the petitioner was fired upon by accused Constable Mahesh, it is stated that the matter is still at the stage of investigation and co-accused of Mahesh, who were part of the conspiracy, have been arrested. With regard to query No.3, it is stated that out of total 43 prosecution witnesses, 34 PWs have been examined and all the private witnesses have already been examined. So far as query No.4 regarding mental and health condition of the petitioner is concerned, medical report submitted by the Medical Officer, District Prison, Gurugram reads as under: -

“MEDICAL REPORT

UT-3599/2021 AJAY s/o KRISHAN CHANDER

Under trial inmate 3599/2021 AJAY s/o KRISHAN CHANDER,

lodged in District Prison, Bhondsi, Gurugram on 04/09/2021. At the time of admission to the jail, he was in poor state of health. As per the documents received, he was discharged from KAINOS Super Speciality Hospital, Rohtak with the PRIMARY DIAGNOSIS of TBI, GUNSHOT INJURY, B/L ACA TERRITORY INFARCT, and SECONDARY DIAGNOSIS-LRTI. As per records, inmate was operated (Craniotomy) at Kainos Super Speciality Hospital, Rohtak on 18/03/2021, Skull base repair (operated on 03/06/2021) at Artemis Hospital, Gurugram. Inmate presented in poor health condition E4V aphonic M4. Inmate admitted at Jail Hospital, Gurugram since then.

Since, Jail Hospital, Gurugram lacks higher facilities like ICU settings, therefore, on 05/09/2021, he was referred to the Casualty, Civil Hospital, Sector-10, Gurugram for further management. From there, inmate was referred to the PGIMS, Rohtak, where he was examined and investigated and prescribed medicines by Neurosurgery Specialist. As of now, he is admitted in Jail Hospital, Gurugram and provided with the medications prescribed to him by the Neurosurgery Specialist (from PGIMS Rohtak).

But, even after repeated follow-up and referrals, his health condition is not improving and PEG is infected (for which inmate patient was referred by the Specialist at PGIMS Rohtak to the institute where it was inserted- as per records) for which we have

already informed the treating doctors at PGIMS, Rohtak, but no effective aid was given and still inmate condition is deteriorating and no improving.

Jail Hospital, Gurugram is a Primary care institute and lacks higher facilities to manage such bedridden (due to which he has stated with BED SORES) and poor health condition patient, for which we have already informed Superintendent of Prison, Gurugram and the treating Doctors at PGIMS Rohtak. We have already referred the inmate patient to Highest Tertiary care centre of Haryana i.e. Pt. B.D. Sharma PGIMS, Rohtak, multiple times and also to AIIMS, New Delhi (at AIIMS he was given date for the OPD).

As on date, inmate Physical/Medical health condition is poor and can worsen at any point of time and due to lack of facilities, inmate patient cannot be managed at Jail Hospital, Gurugram.”

Learned counsel for the petitioner submits that three co-accused of the petitioner, namely Sumit, Rupender @ Nanha and Yashbir @ Foji have already been granted the concession of regular bail by this Court vide order dated 19.07.2018 passed in CRM-M-14000-2018, order dated 18.09.2019 passed in CRM-M-38690-2019 and the order dated 23.10.2019 passed in CRM-M-43966-2019, respectively. It is further submitted that the petitioner is in custody for the last 03 years, 05 months and 12 days, though he is facing trial in some of the cases, as noticed above.

Custody certificate dated 23.11.2021, filed in the Court today, is taken on record.

Learned State counsel, assisted by learned counsel for the complainant, has not disputed the factual position.

After hearing learned counsel for the parties, without commenting anything further on merits of the case and considering long custody of the petitioner and in view of the fact that all the private witnesses have already been examined, especially the medical report of the petitioner, which suggests that despite repeated referrals to PGIMS, Rohtak, where the petitioner is in continuous treatment, his health condition is not improving and the jail hospital is a primary care institute and lacks specialized facilities to manage the petitioner, who is bed-ridden and has developed bedsores and with a further opinion that condition of the petitioner can be worsened at any point of time due to lack of medical facilities, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

24.11.2021
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No