

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

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**Date of decision: 20.07.2022
CRM-M-3385-2022 (O&M)**

SALMAN

....Petitioner(s)

Versus

STATE OF HARYANA

...Respondent(s)

CRM-M-10465-2022 (O&M)

AZAD AND ORS.

....Petitioner(s)

Versus

STATE OF HARYANA

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Virender Mandhan, Advocate
for the petitioners.

Mr. Ashish Yadav, Additional AG Haryana.

VINOD S. BHARDWAJ. J. (ORAL)

This common order shall dispose of the above mentioned two criminal miscellaneous petitions as they arise from a same FIR.

The instant petitions have been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioners in case bearing FIR No.284 dated 19.08.2018 under Sections 148, 149, 302, 307, 458 and 460 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') registered at Police Station Madhuban Karnal.

The FIR in the present case was got registered at the instance of Lakhwinder Kumar which reads thus:-

“To, The SHO, PS Madhuban Karnal. Sir, it is requested that I, Lakhwinder Kumar son of Sh. Ishwar, am resident of village Sanghoi, District Karnal. That we are two brothers and three sisters. That on 18.08.2018, my younger brother Ajay and my brother-in-law namely Vinod son of Sh. Jai Bhagwan caste Brahmin resident of Badnara District Kaithal came to Bhai Behan Mandir near Yamuna River Bridge at Manglora for worship. Today in morning at about 07:29 o'clock, I made phone call to my known Sunil Shastri resident of Sarfabad Majra District Karnal for asking his wellbeing but Sunil Shastri stated me that today in night, tragedy has taken place in Bhai Behan Mandir. Due to which, your brother, brother-in-law and other three persons have sustained injuries. You have to arrive on spot. That after some time, phone call was again received from Sunil Shastri that condition of these all persons are serious. That Vinod and Sultan Kashyap residents of Bahri UP have been died on spot. I am going to KCGMC for the treatment rest of persons. You will come there. I Surender Sharma resident of House No. 78, Street No. 13, Vasant Vihar Karnal along with Banarsi Dass son of Sh. Prem Chand resident of Sanghoi District Karnala and Joginder Kumar resident of Sanghoi reached KCGMC Karnal, where, Sunil Shastri was already present. That I enquired about the matter from Surender Banarasi and Sunil Shastri, they enquired from Mama alias Harjinder who is attendant in Bhai Behan Mandir, he stated us that about five to seven days ago, quarrel had taken place between me Arun alias Ganja son of Sh. Jaswant caste Jaat resident of Manglora and he threatened me to tackle next time and kill. Arun alias Ganja in connivance of number of his accomplices attacked in night and after tying us, attributed injuries and fled away from spot after looting temple. That Arun Ganja along with his accomplices entered into temple in night and looted the temple and murdered Vinod and Sultan

Kashyap and has attributed grave injuries to Ajay, Ravinder and Harjinder alias Mama.”

Learned counsel appearing on behalf of the petitioners contends that the petitioners are not named in the incident and as per the apprehension expressed by the complainant, the incident in question was attributed against Arun @ Ganja in connivance with various other persons. He contends that during the course of the investigation the said suspect Arun @ Ganja has been found innocent. It is further argued by the learned counsel that the injured witness namely Ajay Sharma had stepped into the witnessbox as PW-6 and he had specifically deposed that he had not seen the petitioners in the Temple on the date of the incident. It is argued that one of the co-accused namely Ajay had also submitted an application to the Inspector General of Police for seeking re-investigation in the case detailing out their false implication in the instant case. He contends that the petitioners are working as daily wage labourers and false recovery of *danda* has been foisted against them. Besides, there are total 33 prosecution witnesses that have been cited by the prosecution and that about 7 witnesses have been examined so far. It is contended that the cross-examination of the seventh witness namely Lakhwinder Singh has not concluded and that an application under Section 319 CrPC for summoning of Arun @ Ganja as accused has been moved and the proceedings are now pending for consideration of the said application. He contends that the petitioners are in custody since 28.08.2018 and have already undergone a custody of nearly 03 year and 11 months. It is also argued that the petitioners do not have criminal antecedents and are not required in any other case.

Per contra, Mr. Ashish Yadav, learned Additional AG Haryana contends that 04 persons had died in the said incident and that recovery of *danda*

had been effected at the disclosure of the petitioners. He, however, could not dispute the fact that the petitioners have already undergone actual custody of nearly 03 years and 11 months and that the case is still pending for consideration of an application moved under Section 319 CrPC and in the event of the said application being allowed, the witnesses of the prosecution shall have to be re-examined. Besides, he is not in a situation to controvert about the clean antecedents of the petitioners. He further contends that the recovery pursuant to the disclosure was effected from the house of the accused persons.

Controverting the aforesaid submissions, learned counsel for the petitioners contends that the petitioners are labourers and do not have any house. Rather, they live in *jhuggis* and the entire investigation has been deliberately misconducted to implicate the petitioners. Learned counsel for the petitioners contends that even though the petitioners are sought to be connected with the commission of the offence on the strength of ATM card as well as the purse, there is nothing to connect that there was any withdrawal by use of the said ATM or that the purse contained any money. Apart therefrom, there is also no such allegation that any jewellery worn by the deceased was removed from their body. He contends that the incident in question had taken place on 19.08.2018 and that the arrest of the petitioners had taken place on 28.08.2018 i.e., after about 9 days of the incident and there was no attempt on the part of the petitioner to use the ATM card or any valuable or currency claimed to be kept in the purse.

I have heard learned counsel for the parties and have perused the material on record.

Taking into consideration the period of actual custody undergone and also their clean antecedents as well as the fact that the case is now pending for

consideration of an application under Section 319 CrPC for summoning Arun @ Ganja as an additional accused and that the offence against the petitioners is yet to be examined, I deem it appropriate to enlarge the petitioner on bail.

Accordingly, the present petitions are allowed and the petitioners are admitted to regular bail subject to their furnishing bail bonds/surety bonds to the satisfaction of Trial Court/Duty Magistrate, concerned.

It is made clear that the petitioners shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation made hereinabove shall not be construed as an expression on the merits of the case and the Trial Court shall decide the case on the basis of available material.

(VINOD S. BHARDWAJ)
JUDGE

July 20, 2022

S.Sharma(syr)

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No