

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

CRM-M-7305-2022(O&M)

Date of decision:-1.8.2022

Jogender @ Joga

...Petitioner

Versus

State of Haryana

...Respondent

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

Present: Mr.R.S. Rai, Sr.Advocate with
Mr.Gautam Dutt, Advocate and
Mr.Karan Pathak, Advocate
for the petitioner.

Mr.Brijesh Sharma, AAG, Haryana.

H.S. MADAAN, J.

1. Custody certificate in respect of the petitioner filed by the State counsel is taken on record.
2. This Second petition petition for regular bail has been filed by petitioner – Jogender @ Joga – an 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.
3. The first petition filed by he petitioner Jogender @ Joga bearing CRM-M-51316-2019 along with a similar petition filed by his co-accused Rakesh bearing CRM-M-21908-2020 had been disposed of vide a

consolidated order dated 8.2.2021 inasmuch as the first said petition for regular bail filed by Jogender @ Joga (petitioner) had been dismissed, whereas the petition so moved on behalf of Rakesh had been allowed.

4 Briefly stated, the facts of the case as per the prosecution version are that Deepak son of Samunder, resident of Asrafpur Matindu, who used to sleep in cattle shed in the field was shot dead. As per the FIR lodged by the complainant Samunder Singh father of the deceased, on 21.2.2018 at about 5:00 a.m. when he had gone to the cattle shed, he found the gate open and on going inside, he saw bullet ridden dead body of his son Deepak lying in pool of blood there. Two empty shells were lying on the floor, whereas a magazine of cartridges was lying on cot of Deepak. It was mentioned in the FIR that Shiksha daughter of Sudhir used to talk and meet with Deepak deceased and for that very reason, Sudhir, his brother Jogender @ Joga (present petitioner) along with Rakesh and Vikas had killed Deepak.

5. After registration of the FIR, the investigation in the matter started. Shiksha and Vikas were arrested in this case on 27.2.2018. Both of them were interrogated. Vikas is said to have 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 an offence under Section 216 IPC on 5.3.2018. The other suspects named in the FIR, namely, Sudhir, Jogender @ Joga and Rakesh were joined in the investigation.

6. 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 to the effect 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. Then, 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.

7. On completion of investigation final report under Section 173 Cr.P.C. was prepared and filed in the Court on 22.5.2018 against Shiksha for an offence under Section 302 IPC and against Vikas for offences under Section 216 and Sections 27 and 30 of the Arms Act.

8. However, subsequently vide order dated 9.7.2018 passed by ADGP(Crime), Panchkula investigation in this case was transferred to

State Crime Branch, Gurugram. Supplementary statement of Samunder was recorded. Sudhir, Jogender @ Joga, Rakesh and Vikas were joined in the investigation and subsequently, they were arrested on 30.7.2019 since the investigation revealed that they had hatched a conspiracy to commit murder of Deepak and had gone to the spot in a scorpio vehicle belonging to Jogender @ Joga, which was being driven by him. It further came out that Deepak was murdered by Vikas in presence of Sudhir, Jogender @ Joga and Rakesh and Shiksha was also present at the time of occurrence.

9. 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 pursuance of the common intention/common objective of all the accused.

10. On completion of investigation, supplementary challan was filed in the Court against Sudhir, Jogender @ Joga, Rakesh, Vikas and Bhup Singh on 16.10.2019.

11. The trial in the case is going on in the Court of Additional Sessions Judge, Sonapat.

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

13. In the first petition filed on behalf of petitioner Jogender @ Joga, it had been observed that two different versions of the incident had emerged inasmuch as during the course of investigation carried out after registration of the FIR, it transpired that murder had been committed by Shiksha using the rifle of her brother Vikas, as such Shiksha had been forwarded to face trial for committing murder of Deepak, whereas her

brother Vikas was sent up to face trial for 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.

14. Subsequently, after filing of challan in the Court, investigation of the case was transferred to State Crime Branch, Gurugram under orders of ADGP(Crime), Panchkula, which on investigation reached at entirely different conclusion that as a matter of fact murder had been committed by Vikas in pursuance of common intention with his co-accused mentioned earlier. It is to be taken note of that in none of the versions, the petitioner Jogender @ Joga is said to be the main culprit having fired shots at the deceased. In the first petition, benefit of regular bail was mainly declined to him for the reason that after being granted interim bail by the Court on his moving application that he was to undergo heart surgery, he was alleged to have threatened the complainant and his family members to compromise the matter with regard to his son Deepak. Learned Additional Sessions Judge, Sonapat in his order had made such observations stating that he had taken panchayat to house of the complainant to pressurize him to compromise the matter and that police protection was accordingly provided to the complainant. For that reason and considering that petitioner is involved in two more criminal cases benefit of regular bail was declined to him. That order was passed on 8.2.2021 i.e. about 1 ½ years back.

15. However, as it comes out, the statement of complainant has since been recorded in the trial Court. Thus the possibility of accused trying to pressurize the complainant stands ruled out. As stated by learned

State counsel out of 38 PWs cited by the prosecution, only 11 have been examined so far with next date of hearing being 31.8.2022. The conclusion of trial is likely to take considerable time. In terms of the custody certificate placed on record by the State counsel, the petitioner has undergone total imprisonment of 2 years, 8 months and 24 days till date.

16. Under the circumstances, I find that the petitioner deserves to be granted concession of bail, although on stringent terms and conditions. Therefore, the petition is allowed and petitioner be admitted to 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, Sonapat, subject to the 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 not leave India without prior permission of the Court;
- (v) he shall surrender his passport before the Investigating Officer, if he has got one, otherwise to furnish affidavit in that regard; 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 1:00 p.m. and he will furnish a declaration that he has not indulged in any criminal activity in the meanwhile.

17. The Court accepting bonds would ensure that sureties furnished are local having documentary proof of immovable properties in their names situated within jurisdiction of the Court of the value double the surety amount. Photographs of the sureties, attesting witnesses and the accused be got attached on the bonds and copies of the title deeds be also

got attached with endorsement made on the original title deeds with regard to the said person having stood surety for the accused in this case.

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

1.8.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No