

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.211

Date of decision: 26.07.2022

1. CRM-M-10550-2021(O&M)

ABHIMANYU

...Petitioner

Versus

STATE OF HARYANA

...Respondent

2. CRM-M-18201-2020(O&M)

SANJEEV @ MONU

...Petitioner

Versus

STATE OF HARYANA

...Respondent

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

Present: Mr. R.K Girdhwal, Advocate
for the petitioner in CRM-M-10550-2021.

Mr. Akashdeep Singh, Advocate
for the petitioner in CRM-M-18201-2020.

Mr. Himmat Singh, DAG, Haryana.

Mr. Anshumaan Dalal, Advocate
for the complainant.

* * *

VINOD S. BHARDWAJ, J. (Oral)

The present order shall dispose of two petitions filed under Section

439 of the Code of Criminal Procedure bearing CRM-M-10550-2021 titled as 'Abhimanyu Vs. State of Haryana' & CRM-M-18201-2020 titled as 'Sanjeev @ Monu Vs. State of Haryana'.

Petitioners have sought regular bail in case bearing FIR No.325 dated 26.06.2017 (Annexure P-1) under Sections 148, 149, 302, 307 of Indian Penal Code, 1860 and Sections 25 & 54 of Arms Act, 1959 at Police Station, Sadar Bahadurgarh, District Jhajjar, Haryana.

The case of the prosecution was instituted on the application moved by complainant Om Parkash, who reported that on 25.06.2017, he and his brother Bhoop Singh were returning from his fields towards their house and they found that in the street near the vehicles, Sunil @ Shastri and Sandeep were standing. When his brother Bhoop Singh asked them to clear the way, they started abusing them and threatened to teach them a lesson. When his son Sanjay returned from the Brick-kiln, he disclosed the incident to him, who told that he would try to persuade them. His son Sanjay went to persuade them and he (complainant), his brother Bhoop Singh, his son Gajraj and Bhoop Singh's son Wazir went to the street and in the meanwhile Sunil, Sandeep, Rajdeep, Jaideep, Sanjeev @ Monu, Vicky, Monu , Jaipal @ Japan etc reached there , armed with weapons and Sunil fired upon Sanjay from his pistol . When Wazir and Gajraj went towards Sanjay to rescue him, Sunil, Sandeep etc started firing upon them. When Dhan Kaur, Neelam, Monika came at the spot on hearing noise, all the accused persons fled away from the scene with their weapons. The injured persons were taken to the Hospital but Sanjay was declared dead. Matter was reported to the police and on his application, formal FIR under Sections 148, 149, 341, 302, 307 IPC & 25 of Arms Act was registered.

Learned counsel for the petitioners have contended that the true genesis of the occurrence has been concealed by the complainant which is evident from the fact that the incident in question is stated to have taken place at 9:30 PM on 25.06.2017. As per the supplementary challan filed by the Investigating Agency, the Inspector/SHO along with the fellow associates reached the General Hospital on the same day itself when the family members of the deceased and relatives informed them that they will initiate the proceedings in the morning. A written complaint thereafter was furnished on the next date at around 12:40 PM, leading to registration of the present FIR. He contends that the version as given in the complaint leading to registration of the FIR is thus a doctored version and is not the correct account of the incident in question. They further submit that there were total 10 accused, who had initially been named in the present incident and that an additional accused namely Ravi Kumar, was arraigned subsequently on the basis of disclosure statement. Hence, total 11 persons were nominated as accused out of which 06 persons were found to be innocent by the Investigating Agency.

Referring to the merits of the case, counsel for the petitioners have argued that Sunil @ Shashtri, who is named in the present case as amongst the assailants to have fired a shot had in fact sustained two bullet injuries viz. one on the chest and the other on the pelvic region, along with the corresponding exit wound. The injuries so sustained by Sunil @ Shashtri have not been explained by the prosecution. A reference was also made to the report of the FSL, Madhuban, Haryana, dated 19.07.2018, to contend that one deformed and mutilated 9mm fired bullet, one jacket piece of 9mm fired bullet, one lead piece and three live cartridges had also been recovered from deceased-Wazir. It is argued that no explanation has been tendered as to why deceased-Wazir was carrying live

cartridges and mutilated and fired bullet.

He further submits that during investigation two weapons were recovered by the Investigating Agency, one from co-accused Ravi Joon @ Shri (non-applicant) marked as W/1 and the other from accused/petitioner-Abhimanyu marked as W/2. The ballistic examination conducted by FSL, Madhuban, shows that 9mm fired cartridges that were recovered from the place of occurrence, bore distinct marks of the countrymade pistol marked as W/1 to have been recovered from co-accused Ravi Joon @ Shri. There was no cartridge case or bullet recovered from the place of occurrence that would be linked to have been fired from the countrymade pistol recovered from accused Abhimanyu (petitioner in CRM-M-10550-2021).

A further reference is made to FSL report to contend that the other recovered 9mm cartridges are found to have been fired from one and the same weapon, but not from the countrymade pistols recovered from any of the petitioners. The petitioner Sanjeev @ Monu (CRM-M-18201-2020) was arrested on 29.07.2018 and a countrymade pistol along with one .35 cartridge was also alleged to have been recovered from him. The said countrymade pistol was marked as W/1 and cartridge case was marked as C/1. The deformed and mutilated bullets recovered from the dead body were also sent for ballistic examination. As per the report received from the FSL, Madhuban, there was no empty/cartridges that were recovered from the place of occurrence, which matched with the countrymade pistol recovered from petitioner Sanjeev @ Monu.

A submission is thus made, while making a reference to the allegations leveled in the FIR itself, that deceased-Sanjay and Wazir had themselves gone to the place of occurrence upon being informed of the

misconduct of Sunil @ Shashtri and that the said persons were duly armed with weapons, since cartridges that were recovered from the person of Wazir and that the empties and cartridges recovered from the place of occurrence do not match with the weapons recovered from the possession of the petitioners herein. The deceased were infact the aggressors as well as the assailants to have opened fire on the petitioner party. However, the said weapons have been removed by the complainant in a clandestine way so as to implicate the petitioners.

Apart therefrom, there is no explanation regarding the injury sustained by Sunil @ Shashtri and that even the said injuries cannot be said to have been a result of any cross firing owing to the use of weapons recovered from the petitioner herein. By making a reference to the aforesaid circumstances, it is argued that the true genesis of the occurrence has been concealed by the complainant party and a tutored version of the incident had been got recorded after an inexplicable delay. They further submit that the petitioners have been in custody since their arrest in July 2018 and have already undergone an actual custody of nearly 04 years in the present case and that only 04 witnesses have been examined so far. They inform that on an application moved under Section 319 of the Code of Criminal Procedure, the persons who were found innocent during the investigation have been summoned as an additional accused and as such, the conclusion of the trial is likely to take an even longer time. It is submitted that it would be determined at the stage of trial as to whether the petitioners were the aggressors or that they were acting in exercise of their right of private defence.

Learned counsel has also pointed out to the order dated 19.05.2020 passed in CRM-M-40657-2019 in the case of petitioner Abhimanyu, wherein a

statement had been made by the State of Haryana, on instructions that the trial is already underway and 10 out of the total 35 witnesses have already been examined, which resulted in the bail petition of Abhimanyu being dismissed then in the year 2020. It is submitted that the aforesaid statement was factually correct and misleading. It is also pointed out that even during the course of hearing before this Court, a statement was made on 24.03.2022 that all witnesses except one have already been examined. It is submitted that the said statements on instructions, were false yet and misleading.

Learned counsel appearing on behalf of the State of Haryana contends that there are two persons who died as a result of the incident in question and both of them have sustained 05 bullet injuries each. The petitioners were named in the first FIR version itself and that even recovery of weapons has been effected from them. He further contends that the petitioners are persons with criminal antecedents and are involved in multiple cases and as such, there is no occasion or reason for their false implication. Recovery of the weapons at the disclosure of the petitioners *ipso facto* indicates their involvement in illegal activities including participation in the current incident. He, however, could not dispute that there is no explanation offered by the Investigating Agency with respect to the injuries sustained by Sunil @ Shashtri and also with respect to the other empties/cartridges recovered from the spot as well as the live cartridges recovered from the person (body) of Wazir since deceased. It is contended that the issue regarding whether the petitioners were the assailants or that they were exercising their right to private defence is a matter of trial. He accepts that only 04 witnesses out of total 38 witnesses have been examined so far.

Learned counsel for the complainant while reiterating the arguments

advanced by the counsel for the State has submitted that two persons had died as a result of the acts committed by the petitioners and that they had brazenly opened fire in an indiscriminate manner, which itself reflects their criminal mindset. He further submits that since the petitioners are having criminal antecedents, there is every possibility of the petitioners indulging in threatening the witnesses and/or misusing the concession of bail and that already one FIR bearing No.67 dated 18.03.2019 was lodged regarding intimidation extended at the behest of the petitioners to the victims and security was ordered to be provided. He also does not dispute the fact that only 04 witnesses have been examined so far.

I have heard learned counsel for the respective parties and have gone through the documents appended along with the present case.

Insofar as the criminal antecedents of the petitioners are concerned, it has been pointed out by the learned counsel for the petitioners that there are total three cases, out of which two cases pertain to Sections 323/506 IPC and one case is only in relation to offences under Section 506 IPC. In relation to the petitioner Sanjeev @ Monu, a reference has been made that regarding the cases that have been registered against him, he already stands convicted in one case and acquitted in two cases and that he is on bail in the other cases that have been registered against him.

Even though criminal antecedents of a person would be a relevant consideration while adjudicating upon an application seeking concession of bail, however, the same is not the sole criteria. The attribution to a petitioner in the case under consideration along with the link evidence collected by the Investigating Agency to establish participation of an accused in commission of the offence, the gravity of the offence, the manner in which the offence has been

committed, the perusal of custody, the stage of trial alongwith possibility of completion of trial in near future are also the relevant circumstances/material that have to be kept in mind by the Court.

Undisputedly, the weapons that have been recovered on the disclosure from the petitioners do not match with any of the empties/cartridges recovered from the spot. It has also not been disputed that the deceased had themselves gone to the place of the petitioners (assailants) in order to make them understand, however, there is no explanation regarding the live cartridges recovered from the deceased Wazir and there is also no explanation given by the prosecution, despite concluded investigation, as regards the empties/cartridges recovered from the spot which have not been connected to any of the weapons recovered in the present case from the petitioners herein or as regards the bullet injuries sustained by Sunil @ Shashtri. The explanation offered by the counsel for the petitioners that the complainant party were themselves the aggressors and had come heavily armed with weapons cannot thus be summarily brushed aside and the same has to be determined at trial. It has also gone undisputed that only 04 witnesses out of a total of 38 witnesses have been recorded, despite the petitioners having undergone an actual custody of nearly 04 years in the present case.

Insofar as the objection of the learned counsel representing the victims as regards the subsequent act of threatening the witness is concerned, the said FIR relates to an incident stated to have taken place while the petitioners were already in custody and there is no reference to any material to show that the petitioners were involved in the same. There is nothing to conclusively hold that the petitioners had been instrumental in extending the said threat. However, to avoid such an apprehension, counsel for the petitioners have submitted that the

petitioners shall remain away from the village to remove any such apprehension in the minds of the complainant. The said understanding is accepted as a sufficient safeguard against the apprehension expressed by the counsel for the complainant.

Before parting with the order, it is essential also to refer that this Court has noticed that a mis-statement was made on instructions from the Police officials who had come to brief the State counsel. While deprecating such a practice, a direction is also issued to the Superintendent of Police, Jhajjar to look into the said aspect and to take appropriate steps in accordance with law, so that such acts are not repeated.

Taking into consideration the facts and circumstances noticed above and without commenting on the merits of the case, I deem it appropriate to enlarge the petitioners 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.

Petitions allowed.

26.07.2022
Amandeep

Whether speaking/reasoned
Whether reportable

(VINOD S. BHARDWAJ)
JUDGE
Yes/No
Yes/No