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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRM-M-20991-2021 (O&M)

Kirpal Singh

...Petitioner

Versus

State of Haryana

...Respondent

2. CRM-M-13909-2021

Jaswinder Singh

...Petitioner

Versus

State of Haryana

...Respondent

3. CRM-M-14952-2019 (O&M)

Varun Kumar

...Petitioner

Versus

State of Haryana

...Respondent

Date of decision: 08.02.2022

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Navkiran Singh, Advocate
for the petitioner
in CRM-M-20991-2021 and CRM-M-13909-2021.

Mr. K. S. Dhaliwal, Advocate
for the petitioner in CRM-M-14952-2019.

Mr. Chetan Sharma, AAG, Haryana.

(Through Video Conferencing)

ARVIND SINGH SANGWAN, J.

CRM-M-20991-2021 and CRM-M-13909-2021 are the second petitions, which have been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to petitioners namely Kirpal Singh and Jaswinder Singh in case FIR No. 0199 dated 16.04.2018, registered under Sections 148, 149, 302, 307, 323, 324, 447, 506, 511, 120-B of the IPC and Sections 25, 27 of the Arms Act, 1959, at Police Station Shahabad, District Kurukshetra, Haryana.

Learned counsel for the petitioner submits that the first petition was withdrawn on 18.03.2021, in order to file fresh petition in the light of re-examination of eye-witnesses.

CRM-M-14952-2019 is the first petition which has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to petitioner namely Varun Kumar in case FIR No. 0199 dated 16.04.2018, registered under Sections 148, 149, 302, 307, 323, 324, 447, 506, 511, 120-B of the IPC and Sections 25, 27 of the Arms Act, 1959, at Police Station Shahabad, District Kurukshetra, Haryana.

Learned counsel for the petitioner Kirpal Singh has argued that as per the allegations in the FIR, registered at the instance of complainant namely Rukamdeen, it is stated that on 16.04.2018, Kirpal, Jasmer, Randhir Singh, Ranjit Singh, Angrej Singh, Jaswinder Singh, Jaib Singh, Nirmal Singh, Kala, Gurjinder Singh, Baghel Singh, Karna, Rajesh @ Jaisa, Rampal Sharma, Suraj, Vijender Singh, Akanpreet, Satbir Singh and Yad Ram along with 200-300 persons all resident of village Kharindwa, Tehsil Shahabad Maranda, District Kurukshetra had forcibly taken possession of land measuring 05 kanals and 07 marlas, which is a place of Muslim graveyard.

On this account, there was a land dispute between the Muslim community of the complainant as well as the accused. On 07.01.2018, a demarcation was got done by the Wakf Board regarding the abovesaid land and a boundary wall was being constructed and due to this reason, Kirpal Singh and others were having a grudge against the Muslim community and were looking for an opportunity to take the possession. It is further stated that Jasmer Singh, uncle of Kirpal Singh has given a complaint regarding the possession against Julfan in Police Station Shahabad and FIR No.11 dated 08.01.2018, under Sections 148, 149, 427 and 447 of the IPC was registered, though, the possession at the spot is of the Muslim community. When the complainant, Shokan, Julfan, Kasu, Jaiky, Rukma, Papla, Usman and Dina along with their folks were present at the spot, then about 200-300 persons came on three tractor-trollies and a car, armed with weapons. Petitioner Kirpal Singh was having a .12 bore gun, Jasmer Singh was having a cutter and all the accused named above along with other 200-300 persons surrounded them and Jasmer Singh exhorted to teach them a lesson. Kirpal Singh fired a gun shot in the chest of Mangat Khan, Bagail Singh fired a gun shot on the forehead of Anguri Devi, Jaswinder Singh fired a gun shot near the neck of Hasmat Ali with his country-made gun and the other accused armed with Gandasi, cutter, axe attacked the Muslim people. In the aforesaid fight, Mangat Khan died because of the gunshot injury and rest of them ran away on receiving the injuries. Fakiria also died on account of injuries inflicted by brick-blows and dandas after two days.

Learned counsel has further argued that though in the fight, the persons from the accused side also suffered the injuries, but no cross FIR was registered and only DDR No.37 dated 05.05.2018 was registered. It is

further submitted that the DDR was not treated as a cross case, though 03 persons from the side of the petitioner i.e. Jasmer Singh (uncle of the petitioner), Angrej Singh (brother of the petitioner) and Ajaib Singh (cousin of the petitioner) suffered injuries as per the MLR dated 16.04.2018.

Learned counsel further submits that though in the FIR, Rukamdeen has stated that petitioner Kirpal Singh fired a gun shot in the chest of Mangat Khan, however, in the statement under Section 161 Cr.P.C., it is stated that petitioner fired many gun shots on Mangat Khan. Learned counsel submits that as per the statement of Rukamdeen recorded as a PW-4 in the Court, it is stated that petitioner Kirpal Singh inflicted iron rod blows on Fakiria and nothing is stated that he has fired upon Mangat Khan.

Learned counsel has thus submitted that there is variation in the FIR version, the statement recorded under Section 161 Cr.P.C. as well as the version given in the Court as PW-4 and, therefore, it will be a matter of trial as to who has caused fatal injury to Mangat Khan @ Mangta.

Learned counsel has then referred to the cross-examination of this witness wherein, he has stated that the disputed land is measuring 05 kanals and 07 marlas (graveyard) was in possession of Sampooran Singh, Jasmer Singh, Randhir Singh and Ranjeet Singh are sons of Sampooran Singh. This witness is aged about 60 years and he attained the age of discretion when he was 15 years of age and prior to the said date of discretion, Sampooran Singh was in possession of the land. This witness also admitted that Punjab Wakf Board has also filed a suit for possession against Sampooran Singh in the year 1987, which was dismissed in the year 1996. It is also admitted that the personal agriculture land of Jasmer Singh and his brothers is situated adjoining the Wakf Board land. This witness

further stated that when the Wakf Board got the demarcation, neither the Sarpanch nor any advocate or police officials were present. This witness further stated that even he was not called by the Revenue Officer before conducting the demarcation.

Learned counsel has also referred to certain other discrepancies in the statement of PW-4.

Learned counsel further submits that another prosecution witness namely Kasu in his statement under Section 161 Cr.P.C. has alleged that petitioner Kirpal Singh raised exhortation and attacked Fakiria with stick on both sides of his ribs and while appearing as PW-8, this witness has stated that Kirpal Singh caused injuries to Fakiria with danda on his chest.

Learned counsel then referred to the statement of another prosecution witness namely PW-10 Yasin to submit that in his statement under Section 161 Cr.P.C., he has stated that Kirpal Singh has attacked Fakiria with a stick causing injuries on both sides of his rib, whereas, in his statement as PW-10 in Court, he has stated that Kirpal Singh has fired a gun shot on Mangat Khan and also pelted brick-bats and nothing is stated that he caused injuries to Fakiria. In cross-examination, this witness again admitted that the land was in possession of Sampooran Singh since long. This witness is also aged about 60 years and stated that when he attained the age of discretion, he was 10 years old and at that time also, the land was in possession of Sampooran Singh and there was litigation pending before the Court with Wakf Board. In cross-examination, this witness pleaded ignorance about Jasmer Singh, Angrej Singh and Ajaib Singh having received any injuries in the fight.

Learned counsel for the petitioner Jaswinder Singh has argued that as per the statement of complainant-Rukamdeen, petitioner Jaswinder Singh is not attributed any injury, however, in the statement under Section 161 Cr.P.C., he has stated that petitioner Jaswinder Singh fired a gun shot on Hasmat Ali, but while appearing as PW-4, he stated that petitioner has fired gun shot on Mangat Khan.

Learned counsel thus argued that even with regard to this accused, there is discrepancy in the prosecution version at different stages.

Learned counsel further submits that as per the FIR, complainant Rukamdeen has stated that petitioner Jaswinder Singh has caused gun shot injury on the neck of Hasmat Ali, however, in his MLR, there is no corresponding injury to support this ocular version.

Learned counsel further submits that in the statement of PW-8 namely Kasu, there is no allegation against the petitioner Jaswinder Singh of giving any fire arm injury to any person, however, PW-10 Yasin stated that petitioner has given injury with a cutter, which according to learned counsel for the petitioner, as per the MLR of Yasin, was declared simple with a blunt weapon.

Learned counsel for the petitioner Varun Kumar submits that petitioner was not named in the FIR and he belongs to a different village and he has no land dispute with the community of the complainant.

Learned counsel further submits that he was referred to as one of the person out of 200-300 persons present at the spot. Learned counsel submits that on the disclosure statement of co-accused namely Saravjeet Singh, petitioner Varun Kumar was nominated as an accused being part of the unlawful assembly, however, no injury is attributed to him.

Learned counsel has further referred to the medical certificate of the petitioner issued by Medical Officer, District Jail, Kurukshetra dated 18.11.2021, which reads as under:-

"Varun S/o Rakesh is an under trial prisoner in District Jail Kurukshetra. He was diagnosed with left tubercular pleural effusion/PTB & taking treatment of the same. ICD was also put in Left side of chest one year back & now removed in chest & TB department govt medical college Chandigarh sec-32. Non healing wound present at left ICD site. Purulent whitish discharge present from ICD site & patient is under treatment for all IN LNJP Hospital Kurukshetra/KCGMC Karnal/GMCH-32 Chandigarh as well as in jail hospital Kurukshetra he is currently admitted in jail hospital Kurukshetra."

*Medical Officer,
District Jail, Kurukshetra"*

One of the common argument of all the learned counsel for the petitioner(s) is that after some of the prosecution witnesses were examined, an application under Section 319 Cr.P.C. was moved, which stands allowed by the trial Court vide order dated 30.11.2021 and 08 other persons are summoned as an additional accused to face the trial.

Learned counsel for the petitioner(s) further submits that now after the summoning of the persons, the case is again fixed for 14.02.2022, for re-recording the prosecution evidence and in a manner, the *de novo* trial has started, though the order has been challenged, however, no stay of proceedings has been granted by this Court.

Learned State counsel has filed the affidavit(s) of the Investigating Officer along with the custody certificates.

As per the custody certificates, petitioner Kirpal Singh is in judicial custody for the last about 03 years, 09 months and 14 days and is not involved in any other case. Petitioner Jaswinder Singh is in judicial custody

for the last about 03 years, 09 months and 10 days and is not involved in any other case and petitioner Varun Kumar is in judicial custody for the last about 02 years, 05 months and 20 days and even he is also not involved in any other case.

As per the affidavit of the Deputy Superintendent of Police, Shahabad (M), District Kurukshetra, filed in case of petitioner Kirpal Singh, after giving the details of the FIR and the investigation conducted by the police, in para 4, it is stated that, the role of petitioner Kirpal Singh is that he has attacked Fakiria with a wooden stick and caused grievous injuries to him and also attacked injured Sohan Lal on his right arm. In para 5, it is stated that, petitioner Kirpal Singh was arrested on 19.04.2018, and one wooden stick (Binda) and tractor trolley was recovered from his possession.

As per the affidavit of the Deputy Superintendent of Police, Shahabad (M), District Kurukshetra, filed in case of Jaswinder Singh, in para 4, it is stated that, he had attacked Khursid Ali, Yasin, Sulemaan and Sherdin with a cutter, which was recovered from him and the injuries as reflected in the MLRs of the said persons are not declared dangerous to life.

On a Court query, learned State counsel submits that co-accused namely Randhir Singh, Harpreet Singh @ Ankush, Vijender Singh, Gurcharan @ Kaka, Saravjeet Singh, Jaspal Singh and Angrej Singh have been granted the concession of regular bail by the Coordinate Benches of this Court in CRM-M-17048-2020, CRM-M-18079-2020, CRM-M-21054-2020, CRM-M-21837-2020, CRM-M-7083-2021, CRMM-17286-2021 and CRM-M-17986-2021 respectively.

Learned State counsel as per the affidavit of the Deputy Superintendent of Police, Shahabad (M), District Kurukshetra, could not

dispute that as per the FIR, the allegations against petitioner namely Kirpal Singh is of opening fire on Mangat Khan, but as per the investigation, he has caused injuries to deceased Fakiria with a wooden stick.

Further as per the affidavit of the Deputy Superintendent of Police, Shahabad (M), District Kurukshetra, against petitioner Varun Kumar, there is no specific attribution.

Learned State counsel has further referred to an order dated 06.02.2020, vide which the request of the prosecution to re-examine the prosecution witnesses were allowed and PW-4 namely Rukamdeen, PW-8 namely Yasin and PW-10 namely Yasin, were re-examined.

In reply, learned counsel for the petitioner(s) have submitted that even in the re-examination of the prosecution witnesses, the defence set up by the petitioner(s) could not be shattered. It is submitted that PW-4 has only stated in his re-examination that son of Kirpal Singh fired a shot on Mangat Khan @ Mangta and, therefore, there no specific person is named. They further submits that in the re-examination of PW-10, it is stated that Kirpal Singh fired a shot on Mangat Khan which he has not stated in his 161 Cr.P.C. statement and, therefore, it is clear improvement to cover up the lacunas as in his 161 Cr.P.C. statement he has stated that Kirpal Singh raised exhortation and gave stick blow on Fakiria.

It is further argued by learned counsel for the petitioner(s) that there are total 83 prosecution witnesses, out of which 26 prosecution witnesses were examined and after allowing the application under Section 319 Cr.P.C., all the witnesses have again been summoned and it will amount to *de novo* trial. It is further argued that looking at the long custody of the petitioners as well as the various discrepancies as noticed above, the

petitioners are entitled to concession of bail.

After hearing learned counsel for the parties, I find merit in case of petitioners namely Kirpal Singh, Jaswinder Singh and Varun Kumar for the following reasons:-

a) As noticed above, the complainant Rukamdeen has given different version in FIR by attributing a gun shot injury to deceased Mangat Khan but changing the version under Section 161 Cr.P.C. and while appearing as PW-4 in the Court by stating that Kirpal Singh inflicted iron rod blows on Fakiria.

b) Similar is the allegations made by PW-8 Kasu, who has given different version than the FIR regarding the injuries caused by the petitioner. Even after re-examination of PW-4 Rukamdeen and PW-10 Yasin, some improvements are made.

Even it will be a matter of trial to find out who was in possession over the land, for which the dispute occurred and, therefore, the defense set up by the petitioner, as per the statement of PW-4, PW-8 and PW-10 cannot be ignored at this stage.

c) In the affidavit of the Deputy Superintendent of Police, Shahabad (M), District Kurukshetra, it is stated in para-4 that petitioner Kirpal Singh has attacked Fakaria with wooden stick and tractor trolley was recovered from his possession, whereas, no fire arm weapon was recovered from him. Petitioner Kirpal Singh is in judicial custody for the last about 03 years, 09 months and 14 days and the trial has virtually re-started after allowing the application under Section 319

Cr.P.C. and, therefore, considering the age of the petitioner as well as long judicial custody, I deem it appropriate to grant the concession of bail to petitioner(s).

d) So far as the petitioner Varun Kumar is concerned, he was not named in the FIR and is suffering constant medical problems due to diagnoses of Tuberculosis, for which he is under constant treatment at Medical College, Sector-32, Chandigarh. Petitioner Varun Kumar has been nominated at the disclosure statement of co-accused namely Saravjeet Singh, who has already been granted the concession of regular bail by this Court vide order dated 23.02.2021 passed in CRM-M-7083-2021. Considering the health condition of the petitioner and the custody, petitioner Varun Kumar also deserves the concession of bail.

e) So far as petitioner Jaswinder Singh is concerned, the primary allegations are that with a cutter he has caused injuries to four persons and looking at his custody and the stage of trial, he is also entitled to concession of bail.

In view of the above, petitioners namely Kirpal Singh and Jaswinder Singh are granted the concession of interim bail on their furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaq Magistrate, concerned. However, it will be subject to a condition that they will not influence the prosecution witnesses in any manner and will stay outside and will not visit revenue estate of village Kharindwa, Tehsil Shahabad Maranda, District Kurukshetra, till the time all

private witnesses of prosecution are recorded.

However, in case they are found misusing the concession of bail, then it will be open for the prosecution to apply for cancellation of the bail.

Petitioner Varun Kumar is ordered to be released on regular bail on their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate, concerned.

A photocopy of this order be placed on the files of other connected cases.

08.02.2022
Chetan Thakur

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No