

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-29843-2021 (O&M)
Date of decision: 07.07.2022

Mohit @ Pahalwan

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ajay Singh Berwal, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

CRM-16173-2022

For the reasons stated in the application, same is allowed and
statements dated 25.03.2022 are taken on record as Annexures A-1 to A-3.

CRM stands disposed of.

CRM-M-29843-2021

Prayer in this petition is for grant of regular bail in FIR No.199
dated 06.05.2018 under Sections 307, 34 IPC and Section 25 of Arms Act
(Sections 302, 120-B IPC and Section 27 of Arms Act were added later on),
registered at Police Station Rai, District Sonipat.

Learned counsel for the petitioner, at the very outset, relies upon the order dated 08.01.2021 passed in CRM-M-16046-2020, vide which co-accused Sachin @ Shooter was granted the concession of regular bail, by passing the following order: -

“...Learned counsel further submits that as per the allegations in the FIR, registered at the instance of complainant Indrawati, wife of deceased Maha Singh, it is stated that she had a son, namely Mukesh, who had died two months ago. It is further stated that main accused Samunder @ Monu, who is the son of Mukesh, had an argument with his grandfather regarding transfer of land and while arguing, he fired a shot on her husband, however, the same did not hit him and he was saved. It is further stated that on that pretext, Samunder @ Monu kept a grudge against his husband and on the day of incident, he came to their house along with his two friends. At that time, her husband Maha Singh, who was aged about 68 years, was lying on a bed and Samunder @ Monu, with an intention to kill him, fired a gun shot which hit Maha Singh and the friends of Samunder @ Monu provoked him to kill his grandfather. Thereafter, accused persons ran away and Maha Singh was taken to a hospital, where he died.

Learned counsel further submits that later on, the petitioner was nominated in this case on the disclosure of main accused Samunder @ Monu and co-accused Mohit and recovery of three fire arms have been effected from them separately in FIR No. 213 of 2018.

Learned counsel further submits that during investigation, it has come that the bullets fired by aforesaid Samunder @ Monu and Mohit hit the deceased, whereas the bullet fired by the petitioner did not hit him. Learned counsel for the petitioner refers

to the statement of PW-1/complainant Indrawati to submit that she has not supported the case of the prosecution as she has not identified either of the three accused persons who have fired shots on deceased Maha Singh. In her cross-examination, she stated that the police has taken her thumb impression on a blank paper and in further cross-examination by the public prosecutor, she admitted that Maha Singh was the grandfather of Samunder @ Monu.

Learned counsel further argues that in view of the statement of PW-1/complainant Indrawati, the only evidence against the petitioner is the disclosure of co-accused Samunder @ Monu and his own statement was recorded in FIR No. 213 of 2018, wherein fire arms were recovered.

Learned State counsel, on the basis of the affidavit of the Superintendent of Police, Sonipat, has not disputed the factual position. In para 7 of the affidavit, it is stated that the bullet fired by the petitioner did not hit deceased Maha Singh, rather, co-accused Samunder @ Monu and Mohit fired two gun shots which hit him...”

For the sake of brevity, facts are not reproduced again.

Learned counsel has relied upon statement of PW1 Indrawati, who stated that she has seen accused Samunder, Sachin and Mohit, who are present in the Court and they are not the persons, who fired upon her husband Maha Singh in her presence. This witness was declared hostile by the Public Prosecutor. In cross-examination, she even denied having made any statement to the police Ex.PW-1/A. It is submitted that the petitioner is in custody for the last 04 years and 19 days and since the material witness has already been examined, there is no possibility of influencing the prosecution witnesses.

Learned State counsel, on the basis of status report by way of

affidavit of Investigating Officer/ASI Yudhvair, Police Station Rai, Sonipat, in which after verifying contents of the FIR, has submitted that cause of death of deceased Maha Singh was ante-mortem firearm injuries, as detailed in the post-mortem report. It is further stated in the affidavit that the accused persons were arrested and recovery of weapon was effected in another FIR No.216 dated 28.04.2018 under Section 302 IPC and Section 25 of Arms Act, Police Station Sampla, District Rohtak.

A perusal of the custody certificate dated 06.07.2022, filed in the Court today, reveals that the petitioner is involved in some more cases and in the present case, he is in custody for the last 04 years and 19 days.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering long custody of the petitioner and also in view of the fact that eyewitness has not supported the prosecution version, 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

07.07.2022
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No