

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

1. CRM-M-30829-2020 (O&M)

Rohit @ Fizra

...Petitioner

Versus

State of Haryana

...Respondent

2. CRM-M-31818-2021 (O&M)

Vijay

...Petitioner

Versus

State of Haryana

...Respondent

Date of decision: 25.05.2022

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

Present:- Mr. Rakesh Lathwal, Advocate and
Mr. Man Mohit Malik, Advocate
for the petitioner in CRM-M-30829-2020.

Mr. Aman Pal, Advocate
for the petitioner in CRM-M-31818-2021.

Mr. Deepak Kumar Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

This common order shall dispose of above noted two petitions
as they arise out of the same FIR.

Prayer in these petitions, filed under Section 439 of the Code of
Criminal Procedure, is for grant of regular bail to petitioners Rohit @ Fizra
and Vijay in case FIR No. 215 dated 23.08.2017, registered under Sections

302, 307, 120-B, 34 of the IPC and Section 25 of the Arms Act, 1959 at Police Station Israna, District Panipat.

At the very outset, learned counsel for the petitioners have referred to an order dated 16.01.2019 passed in **CRM-M-49748-2018**, vide which co-accused Ravinder has been granted the concession of regular bail by this Court. The operative part of the order reads as under:

“Counsel for the petitioner has submitted that as per the FIR, the petitioner was not named and the version of the prosecution is that brother of the deceased – Rambir, namely Kapil had enticed away the daughter of one Rajmal. It is further stated that on 23.08.2017, the complainant received a phone call that her husband Rambir and Sachin @ Chinna have been firmed upon at their shop and in that incident, Sachin @ Chinna died at the spot.

Counsel for the petitioner has further submitted that, in fact, the allegations are primarily against the main accused namely Mahipal @ Mallah, who is son of Rajmal that on account of enticing away his sister by Kapil, the real brother of deceased – Sachin @ Chinna, the accused persons have caused the murder of Sachin @ Chinna. It is further argued that the only allegation against the petitioner is that he was a part of conspiracy and on the basis of the disclosure statement made by other co-accused that he was one of the conspirator, he was nominated in the FIR, however, no motive is attributed towards him.”

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

Learned counsel for the petitioners further submit that the statement of the mother of deceased Sachin/wife of deceased Rambir, namely Kamla, stands recorded, in which she has stated about the incident

and in the Court, she has identified the accused persons, namely Vicky, Mallah, Pahal @ Sandeep and with regard to present petitioners and other accused, she has stated that she does not know their name and they might be of the same village.

Learned counsel for the petitioners have referred to the cross examination of the aforesaid witness, in which she has stated that when she made the statement Ex. P12/A before the police, many of her relatives and members of brotherhood were present and after she was informed about the incident by the aforesaid persons, she has made the complaint. It is further submitted that as per deposition of aforesaid witness, she was not an eye-witness.

Learned counsel for the petitioners further referred to statement of PW-1 Amit Kumar, who is stated to be an eye-witness, to submit that in examination-in-chief, this witness has stated that he does not know who had killed Rambir and his son Sachin @ China. This witness was declared hostile and in cross-examination, he even denied to having made statement Ex. PA to the police to this effect. Similarly, in the statement of another witness PW-2 Mahipal, nothing has come as he has stated that he does not know anything about this case. This witness was also declared hostile and in his cross-examination, he even denied to having made statement Ex. P2 to the police. PW-5 Angrej Singh has also deposed on the same line and in his cross-examination by the public prosecutor, he even denied to having made statement Ex. P6 to the police.

Learned counsel for the petitioners have further referred to statement of PW-6 Surrender, who is nephew of deceased Rambir, to submit that this witness has stated that some unknown persons committed the

murder of Sachin @ China and Rambir. This witness was also declared hostile and in his cross-examination, he stated the he never made any statement Ex. P7 to the police.

Further reference is made to the statement of PW-8 Sonu @ Sandeep, who has stated that he does not know anything about the case and this witness was also declared hostile. In cross-examination, this witness also denied to having made statement Ex. P9 to the police, though he was a witness to the recovery of the car.

Learned counsel for the petitioners have then referred to statement of PW-40 Kamla, who is wife and mother of deceased Rambir and Sachin @ China, respectively, to submit that in her cross-examination, she has named all these persons who are PW-1, PW-2, PW-5, PW-6 and PW-8 that they were present at the time when she made statement before the police, after having a discussion with them.

Learned counsel for the petitioners have, thus, submitted that from the evidence led by the prosecution so far, only accused Vicky, Mahipal @ Mallah and Pahal @ Sandeep have been identified and the petitioners are not identified by any of the eye-witnesses.

It is further submitted that petitioner Rohit @ Fizra is in judicial custody for the last more than 04 years and 07 months and petitioner Vijay is in judicial custody for the last about 03 years and 05 months.

Learned State counsel, on the basis of the custody certificates, has not disputed the factual position, however, it is submitted that the petitioners are involved in some other cases.

Learned State counsel, on the basis of the affidavit of DSP,

Madlauda, has further argued that during investigation, some of the accused were arrested and thereafter, they made their own disclosure that Mahipal @ Mallah was known to them and on his asking, they committed the offence. It is also submitted that the *challan* was presented against seven accused namely Bholu @ Sanjay, Ravinder, Vijay, Rohit, Sandeep, Manjeet and Mahipal. Learned State counsel further submitted that now the case is fixed for evidence of the official witnesses.

After hearing learned counsel for the parties, without making any comment on the merits of the case, considering the aforesaid facts and going through the statement of prosecution witnesses, as referred to above by learned counsel for the petitioners, as well as statement of PW-40 Kamla, wherein she has identified only three persons and also looking into the long custody period of the petitioners, the instant petitions are allowed. Petitioners Rohit @ Fizra and Vijay are ordered to be released on regular bail on their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate concerned.

A photocopy of this order be placed on the file of other connected case.

25.05.2022

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No