

CRM-M-33841-2022

Date of decision:08.08.2022

Shahrukh @ Saruk

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR JUSTICE VINOD S. BHARDWAJPresent: Mr. Virender Singh, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

VINOD S. BHARDWAJ, J.(oral)

The instant petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.284 dated 19.08.2018 under Sections 148, 149, 302, 307, 458 and 460 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') registered at Police Station Madhuban Karnal.

The FIR in the present case was got registered at the instance of Lakhwinder Kumar which reads thus:-

“To, The SHO, PS Madhuban Karnal. Sir, it is requested that I, Lakhwinder Kumar son of Sh. Ishwar, am resident of village Sanghoi, District Karnal. That we are two brothers and three sisters. That on 18.08.2018, my younger brother Ajay and my brother-in-law namely Vinod son of Sh. Jai Bhagwan caste Brahmin resident of Badnara District Kaithal came to Bhai Behan Mandir near Yamuna River Bridge at Manglora for worship. Today in morning at about 07:29 o'clock, I made phone call to my known Sunil Shastri resident of Sarfabad Majra District Karnal for asking his wellbeing but Sunil Shastri stated me that today in night, tragedy has taken place in Bhai Behan Mandir. Due to which, your brother, brother-in-law and other three persons have sustained injuries. You have to arrive on spot. That after some time, phone call was again received from Sunil

Shastri that condition of these all persons are serious. That Vinod and Sultan Kashyap residents of Bahri UP have been died on spot. I am going to KCGMC for the treatment rest of persons. You will come there. I Surender Sharma resident of House No. 78, Street No. 13, Vasant Vihar Karnal along with Banarsi Dass son of Sh. Prem Chand resident of Sanghoi District Karnala and Joginder Kumar resident of Sanghoi reached KCGMC Karnal, where, Sunil Shastri was already present. That I enquired about the matter from Surender Banarasi and Sunil Shastri, they enquired from Mama alias Harjinder who is attendant in Bhai Behan Mandir, he stated us that about five to seven days ago, quarrel had taken place between me Arun alias Ganja son of Sh. Jaswant caste Jaat resident of Manglora and he threatened me to tackle next time and kill. Arun alias Ganja in connivance of number of his accomplices attacked in night and after tying us, attributed injuries and fled away from spot after looting temple. That Arun Ganja along with his accomplices entered into temple in night and looted the temple and murdered Vinod and Sultan Kashyap and has attributed grave injuries to Ajay, Ravinder and Harjinder alias Mama.”

Learned counsel appearing on behalf of the petitioner contends that the petitioner is not named in the incident and as per the apprehension expressed by the complainant, the incident in question was attributed against Arun @ Ganja in connivance with various other persons. He contends that during the course of the investigation the said suspect Arun @ Ganja has been found innocent. It is further argued by the learned counsel that the injured witness namely Ajay Sharma had stepped into the witnessbox as PW-6 and he had specifically deposed that he had not seen the petitioner in the Temple on the date of the incident. It is argued that one of the co-accused namely Ajay had also submitted an application to the Inspector General of Police for seeking re-investigation in the case detailing out their false implication in the instant case. He contends that the petitioner is working as daily wage labourer and false recovery of *danda* has been foisted against him. Besides, there are total 33 prosecution witnesses that

have been cited by the prosecution and that about 7 witnesses have been examined so far. It is contended that the cross-examination of the seventh witness namely Lakhwinder Singh has not concluded and that an application under Section 319 Cr.P.C. for summoning of Arun @ Ganja as accused has been moved and the proceedings are now pending for consideration of the said application. He contends that the petitioner is in custody since 28.08.2018 and has already undergone a custody of nearly 03 year and 11 months. It is also argued that the petitioner does not have criminal antecedents and is not required in any other case. He further contends that similarly co-accused have already been granted concession of regular bail vide order dated 20.07.2022 passed in CRM-M-3385-2022 titled as **“Salman Vs. State of Haryana”** and CRM-M-10465-2022 titled as **“Azad and others Vs. State of Haryana”**.

Per contra, Mr. Kanwar Sanjiv Kumar, learned Additional AG Haryana contends that 04 persons had died in the said incident and that recovery of *danda* had been effected at the disclosure of the petitioners. He, however, could not dispute the fact that the petitioner had already undergone actual custody of nearly 03 years and 11 months and that the case is still pending for consideration of an application moved under Section 319 Cr.P.C. and in the event of the said application being allowed, the witnesses of the prosecution shall have to be re-examined. Besides, he is not in a situation to controvert about the clean antecedents of the petitioner. He further contends that the recovery pursuant to the disclosure was effected from the house of the accused persons.

Controverting the aforesaid submissions, learned counsel for the petitioner contends that the petitioner is labourer and does not have any

house. Rather, he lives in a *jhuggi* and the entire investigation has been deliberately misconducted to implicate the petitioner. Learned counsel for the petitioner contends that even though the petitioner is sought to be connected with the commission of the offence on the strength of ATM card as well as the purse, there is nothing to connect that there was any withdrawal by use of the said ATM or that the purse contained any money. Apart therefrom, there is also no such allegation that any jewellery worn by the deceased was removed from their body. He contends that the incident in question had taken place on 19.08.2018 and that the arrest of the petitioner had taken place on 28.08.2018 i.e., after about 9 days of the incident and there was no attempt on the part of the petitioner to use the ATM card or any valuable or currency claimed to be kept in the purse.

I have heard learned counsel for the parties and have perused the material on record.

Taking into consideration the period of actual custody undergone and also his clean antecedents as well as the fact that the case is now pending for consideration of an application under Section 319 CrPC for summoning Arun @ Ganja as an additional accused and that the offence against the petitioner is yet to be determined, I deem it appropriate to enlarge the petitioner on bail.

Accordingly, the present petition is allowed and the petitioner is admitted to regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of Trial Court/Duty Magistrate, concerned.

It is made clear that the petitioner 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.

08.08.2022
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(VINOD S. BHARDWAJ)
JUDGE

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No