

CRM-M-48077-2021;
CRM-M-48946-2021; and
CRM-M-51471-2021

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(222)

1. CRM-M-48077-2021
NaseemPetitioner

Versus

State of HaryanaRespondent

2. CRM-M-48946-2021
Israr @ KaliPetitioner

Versus

State of HaryanaRespondent

3. CRM-M-51471-2021
IlyasPetitioner

Versus

State of HaryanaRespondent

Date of decision: - 19.07.2022

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Ms. Vaishali Kamboj, Advocate, for the petitioner(s).

Mr. Munish Sharma, AAG, Haryana.

Mr. Sandeep Singh, Advocate, for the complainant.

VIKAS BAHL, J. (ORAL)

This order will dispose of three petitions. The first
petition has been filed by Naseem i.e. CRM-M-48077-2021; second

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petition has been filed by Israr @ Kali i.e. CRM-M-18291-2022 and the third petition has been filed by Ilyas i.e. CRM-M-51471-2021.

The above said petitions have been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioners in FIR No.43 dated 11.03.2021, under Sections 148, 149, 323, 302, 506 IPC and Section 25 of the Arms Act (Section 25 of the Arms Act has been deleted later on), registered at Police Station Jathlana, District Yamuna Nagar.

With the consent of the parties, CRM-M-48077-2021 has been taken as a lead case and the facts are being taken from the said case.

Learned counsel for the petitioners has submitted that petitioner Naseem has been in custody since 24.04.2021, petitioner Israr @ Kali has been in custody since 09.04.2021 and petitioner Ilyas has been in custody since 27.04.2021 and the challan has already been presented and out of total 26 prosecution witnesses, only two have been examined and thus, the trial is likely to take time. It is further submitted that none of the three petitioners has been attributed any specific injury, neither with respect to the deceased nor the injured Sanjeev Kumar (complainant). It is also submitted that neither of the petitioners are involved in any other case and from the medical report, it cannot be said that the deceased, who was a 70 year old person and was under the influence of liquor, has died on account of the alleged injuries caused in the alleged occurrence. It is argued that the perusal of the postmortem report would show that although there was a radish abrasion on the left hand, right side of the neck, right arm and left thigh, but there was no

external injury suffered on the skull and the cause of death, even as per the reply submitted by the respondent-State, was stated to be "*massive intracranial bleeding which is sufficient to cause death in ordinary course of life*". It is submitted that the deceased had not received any grievous injury on any of the vital parts of his body. It is argued that there is no recovery from petitioner Israr @ Kali and Ilyas and there is only a recovery of stick (*danda*) effected from petitioner Naseem, which was also effected from an open space. It is further submitted that the allegations which have been made to the effect that Israr @ Kali had taken out a country made pistol and had threatened to kill, but did not fire, had also been found to be false and the offence under Section 25 of the Arms Act had been deleted and at any rate, even as per the FIR, no injury, much less, a fire arm injury has been attributed to petitioner Israr @ Kali.

Learned State counsel as well as learned counsel appearing on behalf of the complainant have opposed the present petitions for regular bail and have submitted that the main accused, in collusion and in conspiracy with the present petitioners, had caused the death of Kedar Nath, who was a 70 year old man and had also caused two injuries to the complainant and thus, do not deserve the concession of regular bail. It is also submitted that the complainant is yet to be examined.

This Court has heard learned counsel for the parties and gone through the paper-book.

Petitioner Naseem has been in custody since 24.04.2021, petitioner Israr @ Kali has been in custody since 09.04.2021 and

petitioner Ilyas has been in custody since 27.04.2021 and the challan has already been presented and out of total prosecution witnesses, only two have been examined and thus, the trial is likely to take time. The petitioners are stated to be not involved in any other case. No specific injury has been attributed to any of the petitioners with respect to the deceased and the complainant. The allegations against petitioner Israr @ Kali to the effect that he had taken out his country made pistol and had threatened to fire, has been found to be false during the course of investigation and Section 25 of the Arms Act has been deleted. A perusal of the postmortem report as well as the medical report would show that no external grievous injury had been caused to the deceased and in fact there were four abrasions suffered by him, which were on the left arm, right side of the neck, right arm and left thigh and there was no external injury suffered on the skull and the cause of death was stated to be "*massive intracranial bleeding*". A perusal of the FSL report would show that in the exhibits collected of the deceased, who was a 70 year old person, Ethyl alcohol was detected, in "Exbt-1a; 1b; 1c; 1d and 1e" i.e., stomach, small & large intestine, lungs, liver, spleen and kidney, brain and even blood from heart. The question, as to whether or not, the deceased had died on account of the injury suffered during the course of the alleged occurrence, would be finally adjudicated during the course of the trial.

Keeping in view the above-said facts and circumstances, the present petitions are allowed and the petitioners are ordered to be released on bail on their furnishing bail / surety bonds to the satisfaction of the

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concerned trial Court/ Duty Magistrate and subject to them not being required in any other case.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present cases which are only for the purpose of adjudicating the present bail petitions.

It is made clear that in case, any act is done by the petitioners to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioners.

July 19, 2022
naresh.k

**(VIKAS BAHL)
JUDGE**

Whether reasoned/speaking?	Yes
Whether reportable?	Yes