

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

211(1)

CRM-M-49220-2021 (O&M)

Date of Decision: 09.05.2022

RINKU

... Petitioner

Versus

STATE OF HARYANA

... Respondent

AND

(2)

CRM-M-1129-2022 (O&M)

RAVINDER

... Petitioner

Versus

STATE OF HARYANA

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Sandeep Gehlawat, Advocate
for the petitioner in CRM-M-49220-2021.

Mr. Rahul Makkar, Advocate
for the petitioner in CRM-M-1129-2022 .

Mr. Ashish Yadav, Addl. A.G., Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

The above mentioned two petitions are being decided by this
common order as the said cases have arisen out of same FIR.

Instant petitions have been filed under Section 439 of the Code
of Criminal Procedure, 1973 for grant of regular bail to the petitioners in
case FIR No.267, dated 23.08.2020 initially registered under Sections 148,
149 and 302 of the Indian Penal Code, 1860 (later on Sections 148 and 149

of IPC were deleted and Section 34 of IPC alongwith Section 25 of the Arms Act, 1959 were added), at Police Station Sadar Jhajjar, District Jhajjar.

Briefly the allegations as noticed from the FIR in question are to the effect that the same was registered at the instance of Rajesh- brother of deceased Ashok. It is alleged in the said FIR that on 23.08.2020, he was going to Jhajjar from his house for some work, and when he reached the turn of Dadanpur at NH-71, Jhajjar-Rewari Road, he saw the motorcycle of his brother bearing registration No.HR-14J-4983, Make- Bajaj Platina parked over there. When the complainant reached near the motorcycle of his brother after alighting from car, he noticed that his brother Ashok was smeared with blood and running towards a hotel being chased by five young persons. It is stated by Rajesh that two of these persons were known to him as Mohit son of Mukesh resident of Dadanpur and Ravi resident of Bhaproda and that they had given knife blows to his brother Ashok Kumar in his presence at Beniwal Dhaba situated at Surheti Turn. There were three other companions alongwith them and upon seeing the complainant, all the assailants ran away. The complainant arranged for the ambulance and took his brother to hospital, where he was declared as dead, resulting into the registration of the FIR in question.

It is submitted that on the basis of said FIR co-accused Mohit @ MK son of Mukesh was arrested by the police and that the names of the petitioner figured in the confession of Mohit @ MK. The petitioners were accordingly arrested on 28.08.2020 and were sent to judicial custody on

30.08.2020. The investigation in the case is complete and the final report was submitted on 23.11.2020. As per the investigation, the allegations against the petitioners Rinku and Ravinder are to the effect that the petitioner had caught hold of the deceased Ashok while injuries with knife were being given by Mohit @ MK and Raju. Counsel submits that the said Raju is a juvenile and has already been granted the concession of bail by the Juvenile Justice Board. It is contended that no recovery was effected from petitioner Rinku and that a T-shirt worn by petitioner Ravinder was recovered, which was spotted with blood, however, there is no link evidence to establish that the alleged blood spots on the T-shirt actually belonged to deceased Ashok.

Learned counsel has also pointed out that the complainant Rajesh stepped into the witness box as PW3 and has not supported the version of the prosecution and he was declared as hostile. It has been specifically stated by him that he had not moved any application for registration of FIR before the police and has also not identified the petitioners as the persons who were purportedly present at the time of incident and had caused injuries to his deceased brother Ashok. The learned counsel further submits that the petitioners have already undergone an actual custody of 01 year and 09 months and that only 07 witnesses out of the total 23 witnesses have been examined so far.

Mr. Ashish Yadav, Addl. A.G., Haryana has submitted to the contrary that the concession of bail ought not be extended in favour of the petitioners inasmuch as they were part of the assailants, who had facilitated

the infliction of injuries on the person of deceased Ashok, which ultimately culminated into his death. It is alleged that the trial has made headway as 09 witnesses out of total 25 witnesses have been examined till date. He also submits that there is one other case registered under Section 307 of the IPC against petitioner Ravinder and a case under Section 394 of the IPC registered against petitioner Rinku and as such, they have criminal antecedents. It has also been submitted that the mere non-corroboration of the prosecution case by PW-3 would not demolish the same and apparently the petitioners have tampered with the prosecution case and have won over the prosecution witnesses.

Learned counsel for the respective petitioners have pointed out that the petitioners are already on bail in the above mentioned cases and they have also referred to the order dated 15.03.2020 passed in CRM-M-50607 of 2021 titled 'Ravinder Vs. State of Haryana' granting bail to him in the said case under Section 307 of IPC.

I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the instant petitions.

It is undisputed that the petitioners have been in prolonged custody of 01 year and 09 months, whereas the complainant, who happens to be the brother of deceased Ashok and also the eye witness to the occurrence and author of the FIR, has not substantiated or supported the case of the prosecution and has been declared hostile. The identification of the petitioners is suspected and that the petitioners were not named in the

FIR itself and the names of the petitioners figured only in the confession of co-accused Mohit @ MK. The allegation against the petitioners is only to the effect that they had caught hold of deceased Ashok when the injuries with knife were caused by co-accused Raju and Mohit @ MK. Furthermore, insofar as the allegation against accused Ravinder is concerned, even though he is named in the FIR, however, the complainant himself stated in his deposition before the Trial Court that he had not submitted any application in writing to the police for registration of FIR, and has not identified Ravinder as well to be amongst the assailants, who caused injuries to his deceased brother Ashok. The apprehension of the petitioners about influencing the prosecution witnesses by placing reliance upon PW-3 resiling from his stand cannot be read against the petitioners inasmuch as the said witness has not supported the case of prosecution despite the petitioners being in custody. The apprehension is thus misplaced. Even otherwise, mere involvement of the petitioners in other cases cannot be the sole basis to refuse the grant of concession of bail to the petitioners. The power to grant or deny the bail cannot be exercised to inflict sentence upon the accused. Accordingly, I deem it appropriate to allow the instant petitions.

Accordingly, the present petitions are allowed and the petitioners are admitted to regular bail subject to their furnishing bail bonds/surety bonds to the satisfaction of Trial Court/Duty Magistrate, concerned.

It is made clear that the petitioners will not extend any threat

and will not influence any prosecution witness 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.

09.05.2022
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*