

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

**CRM-M No.49627 of 2021 (O&M)
Date of Decision: 08.07.2022**

Balwan

.....Petitioner

Vs

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Pankaj Mulwani, D.A.G., Haryana.

RAJ MOHAN SINGH, J.

[1]. Petitioner seeks grant of regular bail in his 3rd attempt under Section 439 Cr.P.C in case bearing FIR No.252 dated 07.09.2018, registered under Sections 302/307/180/34 IPC and Sections 25/27 of the Arms Act 54 of 1959 at Police Station Khol Rewari District Rewari, Haryana.

[2]. CRM-M No.10009 of 2020 was dismissed as withdrawn vide order dated 07.10.2020 on the prayer of the petitioner. CRM-M No.11338 of 2021 was dismissed on merits vide order dated 14.07.2021 with an observation that the trial Court shall make every endeavour to conclude the trial at the earliest.

[3]. The FIR was registered by Aatish son of Dalip Singh with the allegations that about 5-6 days ago prior to lodging of FIR, one person namely Ajnabi studying in RBS Engineering College, Zainabad after coming to the parking abused the complainant and Naveen. Naveen slapped him. On the fateful day, the complainant was sitting in the parking of Railway Station Dahina. Naveen came to him and informed that after the earlier occurrence, the petitioner (uncle of Ajnabi) had given threats of elimination. On this the complainant and Naveen started proceeding towards house of the petitioner on their motorcycle for talking with him. At about 10.00 A.M., when they reached near the house of petitioner, the petitioner, Rakesh @ Raku and one identifiable boy were found standing duly armed with pistols. In view of old grudge, they with an intention to kill the complainant opened fire. Bullet shot was fired by the petitioner which hit on the waist towards right side then in the head of Naveen. Second bullet hit at the back of Naveen. After being hit, the complainant ran away from the spot and Naveen fell down. Both were admitted in Trauma Centre, Rewari. Naveen died after being hit by the bullet.

[4]. Learned counsel for the petitioner submits that on the fateful day, the occurrence was not taken in the manner as suggested by the complainant in the FIR, rather it is a case of

version and cross-version. On the fateful day, i.e. 07.09.2018, Rakesh son of Ram Kishan was going to his house. When he reached near ATM Booth, the complainant Aatish and Naveen (since deceased) met him and started manhandling him. Rakesh ran towards his house. After 10-15 minutes, Naveen gave a mobile call to Rakesh and threatened him. Naveen asked Rakesh to come to bus stand near railway crossing. After 10-15 minutes, about 15-17 boys namely Aatish, Naveen, Kuldeep, Deepak. Sunil and Alice etc. entered the house of Rakesh. Names of other boys were not known to Rakesh. Aatish caused injury on the left arm of Rakesh by a sharp-edged weapon (Paina). In the meanwhile, mother of Rakesh came there to save him. Aatish abused her and torn her suite. When aunt of Rakesh namely Sheela came there, then Kuldeep misbehaved with her and torn her clothes also. Thereafter, Deepak and Alice dragged Rakesh outside the house and they wanted to take him to Dahina. In the meanwhile, uncle of Rakesh i.e. petitioner, who was working as security guard at Navdeep Jeweller came there. They exhorted that the petitioner should be made a security guard (in a very taunting language) and further exhorted that he should be taken away. They all tried to snatch the pistol of the petitioner, which was tied with the belt around his waist. They dragged the petitioner for a distance of about 30-40 feet and surrounded the petitioner from

all sides. Thereafter Rakesh heard noise of gun shots and assailants fled away from the spot. The cross-version was recorded under Sections 148, 149, 323, 452, 341 and 354-B IPC. In the cross-version Rakesh has already been examined as PW-5. Even statement of Sheela wife of the petitioner was recorded under Section 164 Cr.P.C., wherein allegations of tearing of clothes of Sheela and her Jethani Santosh have been pleaded.

[5]. Learned counsel further submits that the occurrence has taken place in and outside the house of the petitioner and the petitioner has acted in his self-defence on seeing the situation where the accused in cross-version i.e. the complainant in the present FIR was involved in outraging the modesty of his wife and sister-in-law. The complainant-party even *gheraod* the petitioner and were about to take him away along with his nephew Rakesh. Petitioner was arrested on 09.09.2018. Out of 19 prosecution witnesses, only 12 witnesses have been examined so far.

[6]. Learned counsel also informs the Court that the complainant Aatish is having criminal background as he is involved in FIR No.302 dated 13.10.2018 under Sections 307, 323, 34, 506 IPC and Section 25 of the Arms Act besides cross-version in the present case. The witness Nishant @ Nishu is

also involved in five criminal cases involving heinous offences besides his involvement in the cross-version.

[7]. Learned counsel further submits that after the order dated 14.07.2021, passed by this Court in CRM-M No.11338 of 2021, no substantial progress has been made by the trial Court in the context of making any endeavour to conclude the trial at the earliest. Learned counsel has produced the interlocutory orders passed by the trial Court from 12.08.2021 to 07.06.2022.

The same read as under:-

"HRRE01-008293-2018

SC-315-2018

State vs. Rakesh @ Raku and anr.

Present: Sh. Parveen Kumar Assistant Public Prosecutor for State assisted by Sh. Amarjit Singh Yadav Advocate.

Accused Rakesh on bail with Sh. Kailash Yadav Advocate.

Accused Balwan in custody represented by Sh. Kailash Yadav Advocate.

Case received by transfer. It be checked. Accused Balwan has been produced through VC. No PW is present. Adjournment requested. Heard and allowed. Now remaining PWs be summoned for 22.9.2021. Production warrant of accused Balwan who is lodged in District Jail Narnaul be issued for the date fixed.

neeru

*(Sunil Kumar Dewan)
ASJ, Rewari. 12.08.2021
UID No.HR0237*

"HRRE01-008293-2018

SC-315-2018

State vs. Rakesh @ Raku and anr.

*Present: Sh. Parveen Kumar Assistant Public
Prosecutor for State assisted by Sh. Amarjit
Singh Yadav Advocate.
Accused Rakesh on bail with Sh. Kailash
Yadav Advocate.
Accused Balwan in custody represented by
Sh. Kailash Yadav Advocate.*

*One PW is present and examined. Request on
behalf of SI Sunder Lal received. No other PW is present.
Adjournment requested. Heard and allowed. Now
remaining PWs be summoned for 26.10.2021.*

neeru (Sunil Kumar Dewan)
ASJ, Rewari. 22.09.2021
UID No.HR0237

"HRRE01-008293-2018 SC-315-2018

State vs. Rakesh @ Raku and anr.

*Present: Sh. Sandeep Lamba Public Prosecutor
for State assisted by Sh. Amarjit Singh
Yadav Advocate.
Accused Rakesh on bail with Sh. Kailash
Yadav Advocate.
Accused Balwan in custody represented by
Sh. Kailash Yadav Advocate.*

*No PW is present. Adjournment requested. Heard
and allowed. Now remaining PWs be summoned for
25.11.2021.*

neeru (Sunil Kumar Dewan)
ASJ, Rewari. 26.10.2021
UID No.HR0237

"HRRE01-008293-2018 SC-315-2018

State vs. Rakesh @ Raku and anr.

*Present: Ms. Alka Dahiya Public Prosecutor
for State assisted by Sh. Amarjit Singh
Yadav Advocate.
Accused Rakesh on bail with Sh. Kailash*

*Yadav Advocate.
Accused Balwan in custody represented by
Sh. Kailash Yadav Advocate.*

*No PW is present. Adjournment requested. Heard
and allowed. Now remaining PWs be summoned for
22.12.2021.*

neeru (Sunil Kumar Dewan)
ASJ, Rewari. 25.11.2021
UID No.HR0237

“HRRE01-008293-2018 SC-315-2018

State vs. Rakesh @ Raku and another

*Present: Sh. Sanjay Suhag, Ld. Public Prosecutor
for State assisted by Sh. Amarjit Singh
Yadav Advocate.
Accused Rakesh on bail with Sh. Kailash
Yadav Advocate.
Accused Balwan in custody represented by
Sh. Kailash Yadav Advocate.*

*No PW is present. Adjournment requested. Heard
and allowed. Now remaining PWs be summoned for
31.01.2022.*

Shubham (Sunil Kumar Dewan)
ASJ, Rewari. 22.12.2021
(UID No.HR0237)

“HRRE01-008293-2018 SC-315-2018

State vs. Rakesh @ Raku and another

*Present: Ms. Nisha Rani, Ld. APP for State
assisted by Sh. Amarjit Singh Yadav Advocate.
Accused Rakesh on bail with Sh. Kailash
Yadav Advocate.
Accused Balwan in custody represented by
Sh. Kailash Yadav, Advocate.*

*No PW is present. Adjournment requested. Heard
and allowed. Now remaining PWs be summoned for*

22.03.2022.

Shubham (Sunil Kumar Dewan)
ASJ, Rewari. 31.01.2022
(UID No.HR0237)

“HRRE01-008293-2018 SC-315-2018

State vs. Rakesh @ Raku and another

*Present: Sh. Parveen Kumar, Ld. PP for State
assisted by Sh. Amarjit Singh Yadav Advocate.
Accused Rakesh on bail with Sh. Kailash
Yadav Advocate.
Accused Balwan in custody represented by
Sh. Kailash Yadav, Advocate.*

*No PW is present. Adjournment requested. Heard
and allowed. Now remaining PWs be summoned for
30.04.2022.*

Shubham (Sunil Kumar Dewan)
ASJ, Rewari. 22.03.2022
(UID No.HR0237)

“HRRE01-008293-2018 SC-315-2018

State vs. Rakesh @ Raku and another.

*Present: Ms. Nisha Rani, Ld. APP for State
assisted by Sh. Amarjit Singh Yadav Advocate.
Accused Rakesh on bail with Sh. Kailash
Yadav Advocate.
Accused Balwan in custody represented by
Sh. Kailash Yadav, Advocate.*

*One PW Sunder Lal is present and partly
examined, cross examination deferred by the learned
defence counsel as he is not available in the post lunch
session. Adjournment requested. Heard and allowed. Now
to come up on 07.06.2022 for cross-examination of PW
Sunder Pal. All remaining Pws be summoned for the date
fixed.*

Shubham

(Sunil Kumar Dewan)
ASJ, Rewari. 30.04.2022
(UID No.HR0237)

"HRRE01-008293-2018

SC-315-2018

State vs. Rakesh @ Raku and another.

*Present: Sh. Parveen Kumar, Ld. APP for State
assisted by Sh. Amarjit Singh Yadav Advocate.
Accused Rakesh on bail with Sh. Kailash
Yadav Advocate.
Accused Balwan in custody represented by
Sh. Kailash Yadav, Advocate.*

*No PW is present. Adjournment requested. Heard
and allowed. Now to come up on 24.08.2022 for cross-
examination of PW Sunder Pal. All the remaining PWs be
also summoned for the date fixed.*

Shubham

(Sunil Kumar Dewan)
ASJ, Rewari. 07.06.2022
(UID No.HR0237)"

[8]. Perusal of the aforesaid interlocutory orders would show that only one PW was examined on 22.09.2021 and another PW Sunder Lal was partly examined on 30.04.2022 and other dates are only in the context of adjourning the case for want of PWs before the trial Court. Petitioner is in custody for more than 3 years and 10 months. Trial of the case may take some time in its culmination.

[9]. On the other hand, learned State counsel opposed the bail on the ground that it is a case under Sections 302 and 307 IPC with the use of fire arm. Right of private defence as projected by the petitioner would be tested by the trial Court with

reference to the material to be led by the parties during trial.

[10]. Having heard learned counsel for the parties and without making any observation on merits of the case, I find that the petitioner is in custody since 09.09.2018. Period of more than 3 years and 10 months has lapsed. Only 12 prosecution witnesses have been examined out of total 19 prosecution witnesses. Trial of the case would definitely take long time in its culmination. Order dated 14.07.2021 passed by this Court in CRM-M No.11338 of 2021 in the context of concluding the trial at the earliest has not been complied with in its letter and spirit by the trial Court in view of number of zimni orders as reproduced hereinabove.

[11]. The issue whether the the petitioner has exceeded his right of private defence in view of the occurrence having been taken place in and outside the house of the petitioner would be considered by the trial Court on merits at the relevant stage. As of now, keeping in view total custody of the petitioner and stage of trial, I deem it appropriate to enlarge the petitioner on regular bail.

[12]. In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial

Court/concerned Duty Magistrate.

[13]. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

July 08, 2022

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No