

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

252

1)

CRM-M-45987-2022
Decided on : 14.10.2022

Kanwar Pal @ Bholi

... Petitioner(s)

Versus

State of Haryana

... Respondent(s)

2)

CRM-M-46083-2022

Chander Bhan

... Petitioner(s)

Versus

State of Haryana

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Deepender Singh, Advocate,
for the petitioners.
(in CRM-M-45987-2022 & CRM-M-46083-2022).

Mr. Vikas Bhardwaj, AAG, Haryana.

SANJAY VASHISTH, J. (Oral)

This order shall dispose of CRM-M-45987-2022 & CRM-M-46083-2022, as both the petitions are interconnected and have arisen out of same FIR. However, the facts are being extracted from CRM-M-45987-2022.

2. The present petitions have been filed under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to the petitioner(s) – Kanwar Pal @ Bholi and Chander Bhan, who have been booked for having committed the offences punishable under Sections 147, 148, 302, 323, 506 of IPC and Section 25/54/59 of Arms Act (Sections 364, 212 of IPC & Section 30 of Arms Act added later on), in FIR No. 345, dated

31.08.2021, registered at Police Station Ballabgarh Sadar, District Faridabad (Haryana).

3. Learned counsel for the petitioner(s) refers to the order dated 14.09.2022 (Annexure P-6), passed in CRM-M-31343-2022 (Suryadev Vs. State of Haryana) & CRM-M-35308-2022 (Manoj Vs. State of Haryana), and submits that as far as role attributed to the present petitioner(s) is concerned, same is at par with the role attributed to the co-accused i.e. Suryadev & Manoj, who have already been granted concession of regular bail by this Court vide order dated 14.09.2022 (supra), which says as under:-

“This order shall dispose of CRM-M-31343-2022 & CRM-M-35308-2022, as both the petitions are interconnected and have arisen out of same FIR. However, the facts are being extracted from CRM-M-31343-2022.

The present petitions have been filed under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to the petitioners – Suryadev and Manoj, who have been booked for having committed the offences punishable under Sections 147, 148, 302, 323, 506 of IPC and Section 25/54/59 of Arms Act (Sections 364, 212 of IPC & Section 30 of Arms Act added later on), in FIR No. 345, dated 31.08.2021, registered at Police Station Ballabgarh Sadar, District Faridabad (Haryana).

As per the reproduction of version of the FIR in the petition, occurrence in question took place on 31.08.2021 at 12:30 A.M. and thereafter, FIR was registered after about 12 hours later i.e. on 31.08.2021 at 12:30 P.M.

Learned counsel for the petitioner submits that dead body of the deceased had reached hospital just after half an hour i.e. at 01:00 A.M. on 31.08.2021 and the police proceedings recorded in the FIR shows that all the family members were also present in hospital. Learned counsel for the petitioner refers to the relevant part of police proceedings, which is as under:-

“Dharmender father of deceased and other family members told that they would get their statements recorded after due

thoughts (soch samajhar kar). ”

Learned counsel for the petitioners submits that complainant was present on the spot or not, would be a moot question before the trial Court, because in concocting the story 12 hours have been consumed despite knowing names of all the accused in advance. He further submits that six of the accused are from one family. Learned counsel also submits that as far as roles attributed to the petitioners are concerned, both of them were alleged to be armed with wooden dandas and in FIR, no specific attribution is given against them.

Learned counsel for the petitioners further submits that subsequently in the statement recorded under Section 161 Cr.P.C. of the injured witness – Bahadur son of Om Parkash, it is recorded that Manoj, Lekhraj @ Lekhi and Rohit gave him danda blows, whereas, as per MLR, he has only one injury. In other words, injury attributed to three persons is simple in nature.

Learned counsel for the petitioners further argues that similarly in the statement of injured witness – Pushpender son of Dharmender, recorded under Section 161 Cr.P.C., accused Suryadev caused him danda blow on his back, which is also simple in nature.

Based upon the aforementioned allegations levelled in the FIR as well as in the statements recorded under Section 161 Cr.P.C. of both the injured i.e. Bahadur and Pushpender, described role of the petitioners in whole of the case is causing danda blows resulting into simple injuries to the witnesses.

Undoubtedly, there is no specific injury alleged to have been caused by the petitioners on the person of the deceased.

While referring to the injuries recorded in the postmortem report of the deceased Bhupender, learned counsel for the petitioners submits that there is a single firearm shot injury, described in the postmortem report and rest of the injuries are linear abrasion, and it cannot be definitely said that any of the injury has been caused by either of the petitioners (i.e. Manoj & Suryadev) on the person of the deceased.

Learned counsel for the petitioners further argues that even the statements recorded under Section 161 Cr.P.C. of injured Bahadur and Pushpender (attached as Annexures P-4 along with both the petitions), nowhere, alleges any specific injury in any manner caused by the accused-Petitioners Suryadev and Manoj on the person of the deceased Bhupender with the dandas hold by them.

It is further submitted by learned counsel for the petitioners that petitioner Suryadev is inside jail since 18th October, 2021, whereas, petitioner Manoj is inside jail since 31st August, 2021, and trial is yet to commence. There are fairly arguable points during the course of the trial showing the innocence of the petitioners, and further incarceration of the petitioners is not worth in this case.

Per contra, both the learned State counsel have vehemently opposed the prayer and submissions made by learned counsel for the petitioners and submit that it is a serious offence of causing murder of a young boy during the night by number of persons. Therefore, being armed with deadly weapons, the provisions of Section 147, 148 of IPC, are attracted and they are equally liable for causing murder.

Learned State counsel further submit that after completion of investigation, challan has been submitted and charges are yet to be framed. There is list of 31 prosecution witnesses and recording of statement of prosecution witnesses is yet to start.

Mr. Kunal Dawar, learned counsel, who is appearing on behalf of the complainant in both the cases, vehemently opposes the submissions of learned counsel for the petitioners and argues that it is a case of murder, where all the accused reached on the spot collectively during midnight period and used firearm. Therefore, none of the accused can be extended benefit of not having any knowledge or sharing of common intention about the main accused armed with pistol/revolver. He further submits that there is mentioning of the allegations of collectively causing injury to the deceased in the FIR, though learned counsel for the complainant is unable to point out any specific injury having been

caused by any of the accused-Petitioners i.e. Suryadev and Manoj, upon the person of the deceased Bhupender.

Learned counsel for the complainant has referred to the FIR, wherein, complainant has mentioned about the statement given by the deceased during his death and in support of same, he submits that said part of the statement of the deceased is to be construed as dying declaration. But on being asked by the Court that said statement nowhere say qua any specific involvement of the present petitioners, learned counsel for the complainant is unable to add any further argument in support of his submissions.

After considering the submissions of both the sides, and perusing the material available on record with their able assistance, and in the totality of the circumstances, I find that there are several grounds to be considered when fatal injury is only one and total 14 persons have been involved in the case. The question of common object or common intention is yet to be decided by the trial Court after analyzing the evidence to be led before it in due course of time and that may take reasonably long time. The Court is also conscious of the fact that role of both the petitioners have not been specified in the FIR version and it was not got lodged at the very first instance when the complainant and his family members and the police were present in the hospital, though same would be subject matter before the trial Court to look into the reasons behind it. Moreover, version of the FIR is developed in the police record after about 12 hours and all the circumstances are yet to be examined by the learned trial Court.

Be that as it may, injuries attributed to the petitioners are simple one with dandas to the injured witnesses i.e. Manoj to Bahadur and Suryadev to Pushpender. Therefore, their roles in participation of the crime with common intention yet to be examined. It is also not disputed that petitioner Suryadev (in CRM-M-31343-2022) is inside jail since 18.10.2021 and petitioner Manoj (in CRM-M-35308-2022) is inside jail since 31.08.2021. It is also admitted that investigation qua the petitioners is already complete and challan has already been submitted and recording of evidence is yet to commence. In this view of the situation, I am of

the view that with the roles assigned to the accused-petitioners, they cannot be kept inside jail for indefinite period, where conclusion of trial is likely to take considerable long time. Therefore, in my view, petitioners at this stage deserve concession of bail. Accordingly, the present petition is allowed. Petitioners are ordered to be released on bail in this case, subject to their furnishing bail/surety bonds to the satisfaction of the learned Trial Court/ Chief Judicial Magistrate/ Illaqa Magistrate/ Duty Magistrate concerned, if not required in any other case.

It is made clear that the petitioners shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation made here-in-above 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 evidence available on record.”

On the other hand, learned State counsel while opposing the prayer and submissions made by learned counsel for the petitioner(s), submits that being it a serious case of murder, petitioner(s) do not deserve the concession of bail, as there would be apprehension of threatening or influencing the witnesses also. While submitting so, learned State counsel points out the details of other cases registered against petitioner – Kanwar Pal @ Bholi (in CRM-M-45987-2022) in paragraph 19 of the petition.

On being confronted, learned counsel for the petitioner(s) submits that out of total five cases registered at Police Station Sadar Ballabgarh only against the petitioner, in three cases i.e. FIR No. 124 dated 11.03.2020 already untraced report has been filed in the Court, and in FIR No. 161 dated 01.05.2016 cancellation report has been filed in the court and in FIR No. 356 dated 10.06.2020 petitioner (Kanwar Pal @ Bholi) has been found innocent by the police. However, learned counsel for the petitioner(s) does not deny the factum of conviction of accused – Kanwar Pal @ Bholi

and pendency of appeal in FIR No. 97 dated 12.04.2014, whereas, in FIR No. 181 dated 09.04.2019 petitioner is on anticipatory bail.

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

Be that as it may, as on date, there is no material substance with the prosecution to substantiate their apprehension against the petitioner(s) that they may influence the prosecution witnesses. Besides this, it is also very fairly conceded by learned State counsel that as far as role of the present petitioner(s) is concerned that is almost the same, as of other co-accused i.e. Suryadev and Manoj, who have been granted the concession of bail by this Court.

In view of the stand of the parties and detailed submissions recorded while granting bail to other co-accused namely Suryadev and Manoj, I deem it appropriate to grant the concession of bail to the present petitioner(s) also, as the role attributed to them is also similar. As per learned counsel for the petitioner accused-petitioner Kanwar Pal @ Bholi is alleged to have lathi in his hand, who has been attributed the simple injury on left arm of Pushpinder, and other accused-petitioner Chander Bhan has been attributed causing simple injury to Pushpinder and Jeetu with wooden danda. It is conceded position that petitioner(s) has not been attributed any specific injury having been caused to the deceased.

Accordingly, prayer made in the present petition(s) is allowed. Petitioners in both the cases are ordered to be released on bail in this case, subject to their furnishing bail/surety bonds to the satisfaction of the learned Trial Court/ Chief Judicial Magistrate/ Illaqa Magistrate/ Duty Magistrate concerned, if not required in any other case.

It is made clear that the petitioners will not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation made here-in-above 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 evidence available on record.

Petitions stand disposed of accordingly.

(SANJAY VASHISTH)
JUDGE

October 14, 2022

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No