

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CRM-M-46447-2022

Sandeep Bainsla

... Petitioner

Versus

State of Haryana

... Respondent

2. CRM-M-48713-2022

Rajesh @ Bara @ Shivam

... Petitioner

Versus

State of Haryana

... Respondent

3. CRM-M-54220-2022

Yogesh @ Yogi

... Petitioner

Versus

State of Haryana

... Respondent

Date of decision : 29.11.2022

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr. Amit Arora, Advocate
for the petitioner in CRM-M-46447-2022 &
CRM-M-48713-2022.

Mr.Abhilaksh Grover, Advocate
for the petitioner in CRM-M-54220-2022.

Mr. Vishal Malik, DAG, Haryana.

Mr.Kamal Chaudhary, Advocate
for the complainant.

VIKAS BAHL, J.(ORAL)

This order will dispose of three criminal miscellaneous petitions filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioners in FIR No.434 dated 10.11.2021, registered under Sections 148, 149, 302, 307 IPC and Sections 25, 27 of the Arms Act (Section 120-B IPC and Section 25 of the Arms Act, 1959 added later on) at Police Station Kotwali, District Faridabad.

The first petition has been filed by petitioner-Sandeep Bainsla i.e., CRM-M-46447-2022, the second petition has been filed by petitioner-Rajesh @ Bara @ Shivam i.e., CRM-M-48713-2022, and the third petition has been filed by petitioner-Yogesh @ Yogi i.e., CRM-M-54220-2022.

Learned counsel for the petitioners have jointly submitted that petitioner Sandeep Bainsla and Rajesh @ Bara @ Shivam have been in custody since 17.11.2021 and petitioner Yogesh @ Yogi has been in custody since 13.01.2022 and the investigation is complete and the challan has already been presented and there are 42 witnesses, out of which, 3 have been examined and thus, the trial is likely to take time. It is submitted that in the present case, as per the FIR, Mustak (deceased) and Mubarik (injured) were eating biryani in a shop owned by one Manish and one Arun was also present at the spot. As per the prosecution case, all the said persons i.e. Mubarik (PW-1), Arun (PW-2) and Manish (PW-3) have been examined and they have not supported the case of the prosecution and have been

including, the present petitioners, are not the persons who hatched the criminal conspiracy to attack the complainant party. It is further submitted that the complainant in the present case was not the eye-witness and had learnt from Mubarik (injured) and Arun that two persons had come on a bike and had shot the brother of the complainant Mustak and had also injured Mubarik. It is stated that as per prosecution case, two persons who had fired at the deceased Mustak and Mubarik were namely, Vinod Bidhuri and Arun @ Anna. It is further stated that the said two persons were being followed by a Scorpio and Ciaz car in which several other accused persons, including the present petitioners, were also stated to be travelling, but even in the FIR, no overt act has been attributed to the petitioners with respect to the alleged incident dated 10.11.2021. It is submitted that the best case of the prosecution on the basis of disclosure statement of Vinod Bidhuri against Yogesh @ Yogi and Rajesh @ Bara @ Shivam is that they had accompanied said Vinod Bidhuri when he had gone to commit the alleged offence and against Sandeep Bainsla is that few days prior to the incident, he had conspired with other persons to kill the deceased. It is further submitted that no overt act much less any injury, has been attributed to the petitioners and no recovery has been effected from Sandeep Bainsla and Rajesh @ Bara @ Shivam. It is stated by learned counsel for the petitioner Yogesh @ Yogi that although, recovery of one Ciaz car has been effected from the said petitioner but as per the FIR only Scorpio and Creta car were used in the alleged occurrence and not the Ciaz car and thus, the recovery of Ciaz would not connect the present petitioner with the alleged offence.

Learned State counsel as well as learned counsel for the complainant, on the other hand, have opposed the present petitions for

regular bail and have submitted that petitioners Yogesh @ Yoti and Rajesh @ Bara @ Shivam are involved in one more case and petitioner Sandeep Bainsla is involved in two more cases. It is further submitted that main accused Vinod Bidhuri in his disclosure statement has stated that Yogesh @ Yogi and Rajesh @ Bala @ Shivam were also along with him when the incident had taken place. The other facts, however, have not been disputed.

Learned counsel for the petitioners, in rebuttal, have relied upon the judgment of Hon'ble Supreme Court in ***“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”***, reported as ***2012 (2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail applications of the petitioners cannot be rejected solely on the ground that the petitioners are involved in other cases. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

This Court has heard learned counsel for the parties and has perused the paper book.

Petitioners Sandeep Bainsla and Rajesh @ Bara @ Shivam have been in custody since 17.11.2021 and petitioner Yogesh @ Yogi has been in custody since 13.01.2022 and investigation in the case is complete and there are 42 prosecution witnesses, out of which only 3 witnesses have been examined so far and thus the trial is likely to take time. As per the prosecution case, it is Arun @ Anna and Vinod Bidhuri who had gone on a

motorcycle on 10.11.2021 and had fired from their respective pistols upon Mubarik and Mustak, as a result of which, Mustak died and Mubarik had suffered gunshot injuries. The best case of the prosecution against Rajesh @ Bara @ Shivam and Yogesh @ Yogi is that they had gone along with main accused Vinod Bidhuri and Arun @ Anna to the place of incident although the said persons had not caused any injury to any person. The best case against Sandeep Bainsla is that prior to the date of incident he had conspired with other accused to kill the deceased. Mubarik, who is the injured eye-witness has been examined as PW-1 and he has not supported the case of the prosecution and has rather submitted that the accused persons, including the present petitioners, were not the persons who had hatched the criminal conspiracy and inflicted injuries. Arun, who is the other eye-witness, has been examined PW-2 and even he, has not supported the case of the prosecution and has been declared to be hostile. Manish has been examined as PW-3 and he is the owner of the Biryani stall where the deceased and the injured were sitting & eating and even he has not supported the case of the prosecution. The complainant in the present case is not an eye-witness.

Keeping in view the abovesaid facts and circumstances and the law laid down in ***Maulana Mohd. Amir Rashadi's*** case (supra), the three petitions are allowed and the petitioners are ordered to be released on regular bail on their furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to them not being required in any other case.

However, it is made clear that in case, any act is done by the petitioners to threaten 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 petitioner.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

November 29, 2022
Davinder Kumar

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