

CRM-M-2803-2023 (O&M) AND
CRM-M-17447-2023 (O&M)

214 (2 cases)
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: August 16, 2023

1. CRM-M-2803-2023 (O&M)

Vikas @ Vicky

....Petitioner

versus

State of Haryana

....Respondent

2. CRM-M-17447-2023 (O&M)

Dharmender

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Amit Arora, Advocate for petitioner
in CRM-M-2803-2023.

Dr. Pankaj Nanhera, Advocate,
Mr. Rahul Gautam, Advocate for petitioner
in CRM-M-17447-2023.

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (ORAL)

Vide this common order, above-mentioned two bail petitions, arising out of the same FIR, are being disposed of. For brevity, recitals/facts are from CRM-M-2803 of 2023.

2. After being declined anticipatory bail by the trial Court, the two undertrials seek bail in a case bearing FIR No.0458 dated 23.12.2020, registered under Sections 148, 341, 302 read with Section 149, 120-B of the Indian Penal Code, 1860 (for short 'IPC') and Section 25 of Arms Act, 1959 (for short 'Arms Act'), at Police Station, Sector-31, District Faridabad.

3. Per prosecution version, complainant-Hemraj alleged that on 23.12.2020, his brother-Manoj (since deceased) was travelling back from Delhi in a Scorpio vehicle

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and 8-10 unknown persons started to follow him in a Corrola, a Fortuner and another vehicle. They also fired gunshots on his brother. His brother tried to flee, but the assailants surrounded him by stopping their vehicles right in front. They then started firing indiscriminately on his brother. After that the assailants fled away from the spot. Complainant took his brother to Asian Hospital where the doctors declared him as brought dead. An FIR was registered. Complainant informed that his brother had received a threat from one Manoj Mangariya about 7-8 days ago *qua* an ongoing dispute between them in their village. During investigation, petitioners were arrested as co-suspects on 25.12.2020. They are in custody since then.

4. Learned counsels for petitioners submit that petitioners have been falsely implicated. They are not involved in the crime either overtly or covertly. They were not even present at the crime scene. He submits that petitioners were arrested as suspects on the basis of custodial interrogation of main accused. Their statement was obtained under custodial coercion, and such a confessional statement is not admissible. He states that there is no other evidence against the petitioners. Further points out that they have been arrested on the allegation that they had conspired with main accused. Since Section 120-B of IPC has been invoked in the FIR, petitioners have been languishing in jail, notwithstanding neither is there any role attributed to them nor even complainant supported prosecution version at the time of recording of their testimony before the Court. In all likelihood, the trial will result in acquittal of the petitioners. Further submits that if it were a case of the petitioners having conspired with prime-accused, complainant would have supported the prosecution case.

4.1. Learned counsels further urge that nothing is to be recovered from the petitioners and no useful purpose would be served by keeping them behind bars.

5. On the other hand, learned State counsel, on instructions from SI Parveen, opposes the petition and submits that petitioners have committed a serious offence. If released on bail, they might tamper with evidence or influence/ intimate the witnesses

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and also flee from trial. He submits that petitioner, namely, Dharmender is a previous convict. He though admits that there is no past case against the petitioner-Vikas @ Vicky.

6. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

7. On a Court query, learned State counsel submits that challan was presented and charges were framed on 05.12.2022. Investigation is complete, petitioners are thus not required for custodial interrogation. Out of total 56 witnesses, only 3 have been examined till date. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against petitioners are a matter of trial at this stage. Conclusion of trial is still likely to take long time as it is proceeding at a snail pace. Whereas, petitioner-Vikas @ Vicky has already been languishing in jail for the past more than 2 years and 7 months in preventive custody. Petitioner-Dharmender, though has been in continuous custody for more than 2 year and 7 months, but it transpires that his formal custody in the present FIR was caused only on 11.08.2023, after he had undergone sentence in another FIR case. He had undergone sentence for 1 year 7 months and 29 days in that case before being arrested in the present FIR.

8. Petitioners are being kept in preventive custody merely on an unfounded suspicion that if they are let out, they may either tamper with evidence and/or influence witnesses. There is no probability of tampering with evidence as the same has already been seized by the investigating agency.

9. It is stated that petitioners and complainant are residents of same village and they enjoyed cordial relations, there is/was enmity between the petitioners and the deceased. It is the prime-accused, if at all, who harbored inimical feelings against the deceased.

10. Complainant has retracted from his earlier statement since he has not supported the prosecution version against the petitioners herein. There seems likelihood of trial resulting in acquittal of the petitioners.

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11. Being family men and having fixed abode, it is unlikely that petitioners pose any flight risk and/or will flee from trial proceedings.
12. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioners in further preventive custody.
13. Accordingly, petitioners are ordered to be released on bail, in case not required in any other case, on their furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where their case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.
14. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for limited purpose of bail hearing alone and learned trial Court shall proceed without being influenced with this order.
15. Pending application(s), if any, shall also stand disposed of.
16. A photocopy of this order be placed on the file of the connected case.

(ARUN MONGA)
JUDGE

August 16, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No