

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

101+203

Date of Pronouncement: 14.03.2023
CRM-M 3368 of 2023 (O&M)

Bhola Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CRM-M-3437-2023 (O&M)

Nirmal Singh @ Nimma

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Raman Chawla, Advocate for the petitioner.

Mr. Jaiteshwar S. Bhandhari, AAG, Punjab.

Mr. L.S. Sidhu, Advocate
for the complainant.

GURBIR SINGH, J

Since identical questions of law and facts are involved in both the above said two petitions, the same are being disposed of by this common order.

The petitioners have filed the present petition praying for grant of anticipatory bail in case FIR No.300 dated 17.12.2020, under Sections 302, 34, 427 IPC, registered at Police Station Sardulgarh, District Mansa.

As per allegations, Gurnam Singh, father-in-law of the complainant was carving out edge in the fields situated at Dhani Khazan Singh. In the meantime, Harpal Singh @ Pala armed with sword (kirpan), Bhola Singh-petitioner armed with Gandasa and Nirmal Singh-petitioner armed with spade (Kahi) came in the fields of his relative Gurnam Singh.

Harpal Singh @ Pala raised lalkara and gave blow with his sword hitting on the forehead of Gurnam Singh. Bhola Singh gave Gandasa blow hitting on the backside of left ear of Gurnam Singh. Nirmal Singh @ Nimma gave spade blow to him which hit towards left side of his head. Bhola Singh gave gandasa blow, hitting on the left eye brow of Gurnam Singh, who fell on the ground. Complainant and his brother-in-law raised alarm of '*Na-marro Na-marro*' upon which Harpal Singh and others fled from the spot along with their respective weapons. After completion of investigation, challan against accused Harpal Singh @ Pala was filed. Names of the petitioners were kept in Column No.2 of the challan. During the course of trial, the complainant-Gurwinder Singh moved an application under Section 319 Cr. P.C. before the trial Court for summoning the petitioners namely, Bhola Singh and his son Nirmal Singh @ Nimma i.e. petitioners. Vide order dated both the petitioners were summoned to face the trial.

Learned counsel for the petitioners submits that the petitioners were not present at the spot. They are father and son. During the investigation the petitioners were not present at the spot. At the time of occurrence, petitioners were not present at the spot. Petitioner Bhola Singh was present at the Dhani of Sukhwant Singh. Petitioner-Bhola Singh only came to know on the phone call of his relative Raj Kaur at 4.11 pm that Rachhpal Singh @ Harpal Singh @ Pala had murdered his uncle Gurnam Singh. Petitioner-Nirmal Singh was in his fields with Gurpreet Singh from 3 PM to 4.30 PM. During investigation, said information was found to be correct. No recovery is to be effected from the petitioners. Custodial interrogation of the petitioners is not required to be done. They are ready to face the trial, therefore, no useful purpose will be served with their

detention.

On the other hand, learned State counsel and learned counsel for the complainant have opposed the petitions that the injuries attributed to the petitioners are corresponding to the injuries mentioned in the postmortem report. Petitioners raised the plea of alibi which could only be raised in the trial at the time of leading defence evidence. Their plea is without any basis. The petitioners actually participated in the crime in question, due to their influence they were not challaned. Learned counsel rely on the judgment of the Hon'ble Supreme Court of India in case titled as '*Dudh Nath Pandey Vs. State of Uttar Pradesh, decided on 11.02.1981, (1981) 2 Supreme Court Cases 166*'.

Heard.

During investigation, petitioners were found innocent and they were kept in Column No.2 of the challan. The plea of alibi can be proved during trial by the accused that he was so far away at the relevant time that he could not be present at the place where the crime was committed. Since the petitioners are summoned to face the trial along with accused already facing trial, so custodial interrogation of the petitioners is not required to be done. No recovery is to be effected from them. Merit of the case is not to be seen at this stage. No useful purpose would be served with the detention of the petitioners. Both the petitioners are ready to face the trial.

In view of above, both the petitions are allowed. Without discussing the merit of the case, the petitioners are directed to surrender before the learned trial Court within 10 days and move an application/applications for bail. On their doing so, they shall be released on bail to the satisfaction of the trial Court/Duty Magistrate subject to the

further condition that they shall surrender their passports or file affidavit of not having the passport. The learned trial Court may impose any other condition upon the petitioners.

Since the main petitions have already been disposed of, no further orders are required to be passed in the miscellaneous applications.

(GURBIR SINGH)
JUDGE

14.03.2023

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No