

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33362-2022
Date of Decision: April 17, 2023

Jagdev Singh ...Petitioner

Versus

State of Punjab ...Respondent

2. CRM-M-37841-2022

Sunny ...Petitioner

Versus

State of Punjab ...Respondent

3. CRM-M-38517-2022

Amrik Kumar and another ...Petitioners

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. M.S. Saini, Advocate for the petitioner (s)
in CRM-M-33362-2022 and CRM-M-37841-2022.

Mr. I.P.S. Kohli, Advocate for the petitioners
in CRM-M-38517-2022.

Mr. Parneet Singh Pandher, AAG, Punjab.

Mr. Sandeep Gors, Advocate for the complainant.

DEEPAK GUPTA, J.

This order shall dispose of aforesaid three petitions, as all of
them have arisen out of same FIR.

2. All the petitioners are praying for regular bail in case FIR

No.68 dated 06.09.2020 registered at Police Station Dhilwan, District

Kapurthala, under Sections 307, 336, 323, 324, 452, 148, 149, 120-B IPC (Sections 25 & 27 of the Arms Act, 1959 and Section 302 IPC added subsequently vide DDR No.2, dated 07.09.2020).

3. Status report on behalf of respondent-State has been filed in CRM-M-33362-2022.

4. Initial version of the FIR was recorded on the statement of Surti S/o Gugga, as per which on 06.09.2020, he was present at his house, when he received telephonic call from his nephew's son Sahil to the effect that relatives of paternal aunt Rajia were giving beatings to his father. He (Surti) with his brother Raj and wife Billu reached village Bhandal Bet, where he got the compromise effected between the niece Rajia and Sikandar Singh, who left for their respective houses. However, at about 2 p.m., when he along with brother Raj and wife Billu were sitting in the courtyard of his nephew Sikander Singh, one car and motorcycles along with 10-12 youngsters came there, entered the house of Sikander Singh, armed with pistols and *datars*. They included Geeta, daughter-in-law of his niece Rajia, her brothers Vicky and Vijay, father Amrik (*petitioner No.1 in CRM-M-38517-2022*), mother Simla (*petitioner No.2 in CRM-M-38517-2022*) and maternal uncle Lal Chand. They were also accompanied by some youngsters unknown to the complainant, who were armed with pistols and *datars*. One of the unknown persons fired shot with an intention to kill Surti, hitting him in the middle of his right leg. Second fire shot hit him on the right thigh above knee. Another unknown person gave *datar* blow, hitting him on the left side of his head. Another *datar* blow was given by the unknown person hitting his right hand. As he raised alarm, his brother

Raj came forward, who was also given injuries. The assailants fled away on their respective vehicles, firing shots in the air. It was disclosed by complainant Surti that he could recognize the unknown persons, if produced before him.

5. The second version of the FIR was registered based on the statement of one Surender Singh Thakur, who is the father of deceased Vishal Thakur. Said deceased Vishal Thakur was one of the persons, who had gone to the house of Surti with other accused to beat him, but he (Vishal Thakur) got himself injured and ultimately died. It was disclosed by said Surender Singh Thakur that on 06.09.2020 at about 3-3.30 pm, he received a call from his wife that his son Vishal Thakur had sustained bullet injury and was admitted in Oxford hospital. He along with his family members reached the hospital, where his son died on account of receiving bullet injuries.

6. During investigation, supplementary statement was made on 30.09.2020 by first complainant Surti, wherein he nominated additional accused as Raman Kumar @ Teli, Vishal Thakur (deceased), Chhiba, Sunny (*petitioner in CRM-M-37841-2022*), Sidharth, Gurpreet Singh, Gaganpreet Singh and Sanjiv Kumar @ Sajjan. On the basis of disclosure statement made by arrested accused Gurpreet Singh and Sanjiv Kumar @ Sajjan, Jagdev Singh (*petitioner in CRM-M-33362-2022*) was arraigned an accused, vide DDR No.16 dated 03.10.2022. All these persons were also added as accused in the second version of the FIR vide DDR No.29 dated 19.11.2020.

7. During investigation of the second complaint, it was found that

Vishal Thakur son of Surender Singh Thakur was taken by his friend Vicky Kumar to the in-law's house his sister Geeta regarding a dispute and during the occurrence, a fight took place at the spot, in which Vishal Thakur got bullet injury and succumbed to injuries. Vicky Kumar and his brother Vijay had left Vishal Thakur at Oxford hospital and fled away.

8. On 29.09.2020, another statement was made by Surender Singh Thakur, as per which, he had come to know that his son Vishal Thakur was taken to village Bhandal Bet by his friend Raman Kumar @ Teli, Chhiba, Sidharth, Vicky Kumar, Vijay, Gurpreet Singh, Gaganpreet Singh and Sanjiv Kumar @ Sajjan in two cars, where he got killed. Said Surender Singh Thakur made another statement on 19.11.2020, as per which he had come to know that his son Vishal Thakur had differences with Vicky Kumar, who in connivance with his brother Vijay and other family members, had taken him to village Bhandal Bet on the pretext of settling some dispute and in order to settle the dispute, Vicky Kumar in connivance with co-accused had killed Vishal Thakur.

9. After concluding investigation, final report under Section 173 Cr.P.C. was submitted qua 10 accused, who were arrested from time to time. Supplementary challan was presented against two accused on 31.05.2021. P.O. proceedings were pending against four other accused.

10. It is contended on behalf of the petitioners Jagdev and Sunny that they are not named in the FIR; that they have been added on the basis of disclosure statement of co-accused; that no role is attributed to them; that during trial the injured witnesses, namely, Surti and Raj, besides eye witnesses, namely, Billu, Usha and Sikander Singh have turned hostile and

did not support the prosecution case; that co-accused Gurpreet Singh, Lal Chand, Sanjiv Kumar @ Sajjan, Kashmira and Rajia have already been allowed bail, vide separate orders dated 11.07.2022 passed in different petitions by this Court. They have also pleaded about their long incarceration period in custody and prayed for grant of bail.

11. On behalf of petitioners Amrik Singh and Simla, it is pleaded that they have been falsely implicated; that co-accused have already been allowed bail; that prosecution case is based on highly unbelievable story; that complainant Surender Singh Thakur has not supported the prosecution case and turned hostile and that case of the petitioners is on better footing than other co-accused, who have already been allowed bail.

12. In addition to above, while pleading about long custody of the petitioners, it is urged on behalf of all the petitioners that despite the fact that complainant Surender Singh Thakur is represented by the advocate before the Trial Court, he is not being produced for the last several dates for his examination and the trial is being delayed intentionally. Not only this, said Surender Singh Thakur is not an eye witness and whatever statements were made by him before the police, those are based on hearsay. With all these submissions, prayer is made for grant of bail.

13. Opposing the bail petitions, it is submitted by learned State counsel along with counsel for the complainant that all the petitioners with co-accused brutally attacked complainant Surti and that in the incident, one of the accused-assailant Vishal Thakur died due to gun shot injury. It is also pointed out that it is wrongly pleaded by petitioners Amrik Kumar and Simla that witness Surender Singh Thakur has already been examined and

turned hostile, though he has not been examined till date. Pointing out towards the gravity of offence, prayer is made for rejecting the bail petitions.

14. I have considered submissions of both the sides and have also perused the record carefully.

15. This is a case, where as per the admitted position, one of the hunters fell prey to co-hunters, inasmuch as Vishal Thakur (deceased) had accompanied the other assailants so as to beat Surti and his family members, but he (Vishal Thakur) himself sustained gunshot injury and died. It is not the case of prosecution or any of the parties that Vishal Thakur died on account of gunshot injury caused by the opposite party i.e., Surti etc. It is not clearly mentioned in the status report filed by the respondent-State that as to which of the co-accused fired shot, hitting Vishal Thakur, resulting in his death. The role of none of the petitioners is specified in any manner, so as to *prima facie* make them responsible for causing death of Vishal Thakur. As per prosecution, the petitioners with co-accused had gone to beat Surti etc., but Surti, his brother Raj, wife Billu and two other witnesses, namely Sikander Singh and Usha wife of Raj did not support the prosecution case and turned hostile, as is evident from the copies of the statements made by them during trial, placed on record.

16. Apart from above, co-accused Gurpreet Singh, Sanjiv Kumar @ Sajjan, Rajia and Lal Chand, besides Kashmira have already been allowed bail by a co-ordinate Bench of this Court, vide separate orders passed on 11.07.2022. Petitioner Jagdev is in custody since 12.10.2020.

Petitioners Amrik Kumar and Simla are in custody since 05.11.2020;

whereas petitioner Sunny is in custody since 03.03.2021. Thus, all the petitioners are in custody for the last more than two years.

17. Apart from above, it was informed on the last date of hearing to this Court that one of the absconding accused has since been arrested and supplementary challan has been filed qua him and so, *de novo* trial is to take place, which is most likely to take time to conclude.

18. Surender Singh Thakur, the complainant of second version of the FIR, as per own prosecution story, is not the eye witness of the occurrence and whatever he told to the police during investigation, is based on hearsay.

19. Having regard to all the facts and circumstances noted above, but without commenting anything on the merits of the case, all the three petitions are allowed. Petitioners Jagdev Singh, Sunny, Amrik Kumar and Simla are ordered to be released on bail on their furnishing bail bonds and surety bonds to the satisfaction of learned Trial Court/Chief Judicial Magistrate concerned.

20. However, it is made clear that Trial Court will not be influenced in any manner whatsoever by any opinion expressed by this Court in this order.

April 17, 2023
Sarita

(DEEPAK GUPTA)
JUDGE

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