

CRM-M-37983-2022

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(114)

CRM-M-37983-2022

RESERVED ON 24.07.2023

DATE OF DECISION:- 06.09.2023

KHEM CHAND

...PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. S.S.Khurana, Advocate
for the petitioner.

Mr. Munish Sharma, DAG, Haryana
for the respondent-State.

SUVIR SEHGAL, J.

1. By way of present petition filed under Section 482, Cr.P.C., petitioner has sought setting aside of impugned order dated 13.08.2021, Annexure P-4, passed by learned Judicial Magistrate, Rewari and order dated 06.09.2021, Annexure P-7, passed by learned Additional Sessions Judge, Rewari, whereby application filed by him under Section 167(2)(a), Cr.P.C. for release on default bail has been declined and revision petition thereagainst has been dismissed.

CRM-M-37983-2022

-2-

2. Brief factual matrix leading to the filing of the instant petition is that FIR No.101 dated 22.05.2021, Annexure P-1, has been lodged for offences under Sections 302, 34, IPC and Section 25 of the Arms Act, 1959, wherein Sections 118, 120-B, IPC were added and Section 34, IPC was deleted later on, lodged at Police Station Sector-6, Dharuhera, Rewari on the statement of Rocky Yadav. Complainant alleged that his family has enmity with Vishal Sarsar, Ajay, Gullu @ Pritam, Sunnu @ Ravi. On 21.05.2021, the accused did a recce of his house and recorded a video. On the fateful day at about 08:00 P.M., all the four accused came and shot dead his brother Kanwar Singh @ Pakari. Complainant was sitting on a chair near the main gate and witnessed the homicide. Complainant's brother was immediately taken to a hospital, where he was declared brought dead. Surender, Bissu @ Vishwas, Sachin @ Kacchu, Pawan Yadav Sidhrwarli and few other persons were also involved. During the pendency of the proceedings, an application for release of the petitioner on default bail was presented before the learned Judicial Magistrate, which stood rejected vide impugned order, Annexure P-4 and a revision petition, preferred by the petitioner, was declined by the learned Additional Sessions Judge by order, Annexure P-7. Both the orders have been assailed in the present petition.

3. Counsel for the petitioner has contended that the arrest of the petitioner was made under Section 118, IPC and upon conclusion of investigation, he has been charge-sheeted for the said offence. He has raised an argument that as the petitioner is accused of an offence under Section 118, IPC, challan against him was required to be presented within a period of sixty days and on the failure of the investigating

CRM-M-37983-2022

-3-

agency to do so, petitioner, who was apprehended on 23.05.2021, was entitled to be released on statutory bail. He has placed reliance upon the Full Bench's judgment of the Patna High Court in *Shankar Ram Versus The State 1986 Crl. LJ 707*.

4. Opposing the petition, State counsel while making reference to the status report filed by way of affidavit of Deputy Superintendent of Police, Bawal, District Rewari has contended that the petitioner conspired with co-accused to commit the murder and charge Annexure P-8 has been framed against him under Section 302, IPC read with Section 120-B IPC and Section 25 of Arms Act, instead of Section 118 IPC. He asserts that the prescribed period for completion of investigation is ninety days and charge-sheet having been presented within the period prescribed under Section 167(2), application for default bail, preferred by the petitioner, was pre-mature and has been rightly declined by both the Courts. He submits that trial is at an advanced stage as 17 prosecution witnesses have been examined.

5. I have considered the respective submissions of counsel for the parties and perused the material placed on the record.

6. Relevant part of Section 167, Cr.P.C deserves to be noticed and is reproduced hereunder:-

“(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or

commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this subsection shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;”

7. The first part of Section 167 (2) (a) prescribes a period of ninety days “*where the investigation relates to an offence.....*” and the second part provides a period of sixty days “*where the investigation relates to any other offence.....*”. The emphasis in the provision is on the

offence for which the First Information Report has been lodged. The requirement of the Code is not the investigation of the offence allegedly committed by an accused, but the stress is on the investigation into the offence for which FIR has been registered. The individual role ascribed to each of the accused does not determine the period within which the investigating agency is required to present the police report, rather it is the entire gamut of allegations, which determines the limitation period stipulated for the presentation of the report. It cannot be disputed that the offence complained of is murder under Section 302, IPC and the same is punishable with death or imprisonment for life, besides fine. The prescribed period for the completion of investigation in cases relating to murder, irrespective of the role allegedly played by each of the accused, would be ninety days under sub-section 2(a) (i) of Section 167 Cr.P.C. Final report in the instant case has been filed within the prescribed period of limitation. Therefore, the application, filed by the petitioner, seeking default bail on the ground that the police report was required to be submitted within sixty days, is without merit.

8. The argument raised by counsel for the petitioner deserves to be tested on another anvil. If his argument is accepted that would mean that the prescribed period for completion of investigation for every accused in custody would be different, that is, sixty days or ninety days depending upon the allegation against each one of them. That is not the intention behind the provision.

9. Furthermore, although the final report has been presented by the investigation agency against the petitioner under Section 118, IPC, but on examination of the material placed before it, learned Sessions

Judge by order, Annexure P-8, has framed charge against the petitioner and the co-accused for offences under Sections 302, IPC read with 120-B, IPC and Section 25 of the Arms Act, 1959. In the light of this development also the argument raised by counsel for the petitioner has to fail. The judgment relied upon by the counsel for the petitioner is on a totally different footing. The Full Bench of the Patna High Court in *Shankar Ram's* case (supra) has authoritatively *inter alia* held that the final report can be filed after completion of the investigation in respect of the offences alleged against some of the accused while keeping the investigation alive against the co-accused and the accused against whom investigation has concluded are not entitled to get the benefit of Section 167 (2) Cr.P.C. on the ground that investigation qua other accused has not culminated.

10. As a cumulative effect of the aforesaid facts and reasons, this Court is of the firm view that petition being bereft of merit, is hereby dismissed.

11. Nothing said hereinabove shall be construed to be an expression on the merits of the case.

06.09.2023
Kamal

(SUVIR SEHGAL)
JUDGE

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