

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1652-2023 (O&M)

Samsu @ ShamshuddinPetitioner
Vs.
State of HaryanaRespondent

CRM-M-41899-2023

Samsu @ ShamshuddinPetitioner
Vs.
State of HaryanaRespondent

Reserved On.: 22.09.2023
Pronounced On: 26.09.2023

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. R.N. Lohan, Advocate
for the petitioner.

Mr. P.K. Aggarwal, DAG, Haryana.

Mr. A.P.S. Mann, Advocate for
the complainant.

DEEPAK GUPTA, J.

This order shall dispose of two petitions titled above, both filed by same petitioner namely Samsu @ Shamshuddin, arising out of same case pertaining to FIR No.210 dated 17.06.2018 under Sections 148, 149, 323, 341, 307, 506, 302/120-B of the IPC and Section 25 of Arms Act, registered at Police Station Sadar Tauru, District Nuh.

2. In CRR-1652-2023, petitioner has challenged the order dated 06.07.2023 passed by learned Additional Sessions Judge, Nuh, whereby he has

been summoned under Section 319 Cr.P.C. to face trial in above case; whereas in CRM-M-41899-2023, petitioner prays for grant of anticipatory bail under Section 438 Cr.P.C.

Prosecution case and further proceedings:

3. (i) As per prosecution case, on 16.06.2018, a police party was on crime patrolling duty at Village Shikarpur, when it received information from the Police Station Tauru that Shabbir son of Mahmud resident of Village Rahadi and others had been admitted in CHC, Nuh, on account of assault injuries. Police reached the hospital but the injured having received pellets and bullet injuries, requested to get their statements recorded next day. Medico legal reports of at least 15 injured persons were collected, who had received varying number of firearm injuries.

(ii) On next date i.e. 17.06.2018, Chakriya son of Bhobal made statement to the police, as per which on the previous date i.e. 16.06.2018 at about 11:00 a.m. his family members were returning to their home after offering prayers at Eidgah in Village Rahadi, when accused Suban Khan, Abdul Razzak, **Shamshuddin (petitioner)**, Shahrukh, Arif, Tarif, Majjar, Sajid, Nargish, Akhtari, Usmani and 10-12 other peoples all residents of Village Rahadi waylaid Anees son of Shabbir aged 16 years and started beating him. Chakriya disclosed further that as his family members came to know about the said incident, they reached the spot. The accused having guns in their hands, gave gunshot injuries to Satbir, Samina, Nafees, Shahjad, Ajmat, Mohsim, Mubin etc.

(iii) Initially, FIR No.210 dated 17.06.2018 was registered under Sections 148, 149, 307, 323, 341, 506 of the IPC and Section 25 of Arms Act. As Imran and Sehnawaj died during the course of investigation, Section 302 of the IPC was added. Though some of the assailants/accused were arrested during the course of

investigation, but Shamshuddin (petitioner), his wife Usmani, Abdul Razzak, Subhan Khan, Akhtari, Nargis and Israq were found to be innocent during investigation.

(iv) After presentation of the challan under Section 173 Cr.P.C. and the commitment proceedings, the trial commenced against the challaned accused. After recording statement of PW-1 Ajmal and that of PW-2 Nishar (Copies Annexure P-3 & Annexure P-4), application under Section 319 Cr.P.C. was moved by the complainant, which was duly forwarded by the Public Prosecutor, so as to summon petitioner Samsu @ Shamshuddin and some others to face trial along with already challaned accused. Learned Trial Court vide order dated 06.07.2023 partly allowed the application by observing that there was more than *prima facie* case against petitioner Samsu @ Shamshuddin, besides Suban Khan, Abdul Razzak and Israq and so, they were directed to be summoned to face trial along with already challaned accused.

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4. Challenging the aforesaid order, it is contended by learned counsel that though 11 persons were named in the FIR besides 10-12 others but with no specific role attributed to the petitioner. Petitioner and his wife were found innocent during investigation made by DSP Tauru. Even the statement dated 17.06.2018 of PW-1 Ajmal under Section 161 Cr.P.C. (Annexure P-2), does not attribute any specific role to the petitioner but in his testimony as PW-1, he improved his version by attributing gunshot injury by the petitioner to have been caused to deceased Sehnawaj @ Sunny, hitting him on the chest, neck and other parts of the body. Learned counsel contends that PW-2 Nishar made contradictory statement. In these circumstances, PW1 and PW2 are not trustworthy. Learned

counsel contends that names of deceased Sehnawaj @ Sunny and Imran do not find mention in the FIR and that in all the circumstances, the impugned order of learned Trial Court is based on conjectures and surmises and contrary to the settled position of law explained by Hon'ble Supreme Court in ***Hardeep Singh and Anr. Vs. State of Punjab and Anr. 2014(1) R.C.R. (Criminal) 623***, as per which power to summon additional accused under Section 319 Cr.P.C. is an extraordinary power, which should be used by the Court very sparingly and under compelling reasons and to achieve the criminal justice.

With these submissions, prayer is made for setting aside the impugned order dated 06.07.2023.

CRM-M-41899-2023:

5. Seeking anticipatory bail, similar pleas have been taken to the effect that no role is attributed to the petitioner in FIR; that contradictory statements have been made by PW-1 and PW-2 during trial; that petitioner has been summoned only under Section 319 Cr.P.C. as challan had already been presented, and so, custodial interrogation is not required nor any recovery is to be effected from him and so, in all the circumstances, he be allowed anticipatory bail.

Reply by State/ Complainant:

6. (i) Although, in the status report filed by respondent- State in both the cases, stand is taken that the petitioner was found innocent during investigation by DSP, Nuh on verification of the investigation, but learned State counsel ably supported by learned counsel for the complainant have strongly opposed both the petitions.

(ii) Attention is drawn towards MLR of Sehnawaj @ Sunny son of Nishar, a 12 year boy, revealing that he was examined at Shaheed Hasan Khan Mewati

(S.H.K.M.) Government Medical College on 16.06.2018 itself and was brought to the Emergency at 11:02 a.m., with alleged history of firearm injury occurred on 16.06.2018 at about 11:00 a.m. Said Sehnawaj @ Sunny was found to have 03 punctured wounds with blackening present around the margins, at parietal region of the skull, right side of chest and right thigh. Said Sehnawaj @ Sunny later on expired during treatment, as per post-mortem report prepared at S.M.S. Hospital, Jaipur. Learned State counsel submits that these documents without any shadow of doubt indicate that Sehnawaj @ Sunny was injured in the same incident due to firearm injury and later on expired during treatment and therefore, simply because his name does not find mention in the FIR lodged by Chakriya, cannot be a reason to doubt the prosecution case.

(iii) Learned State counsel along with counsel for the complainant further drawn attention towards statement of Nishar son of Asru recorded under Section 161 Cr.P.C., wherein he specifically disclosed the role of petitioner Shamshuddin to have fired from his gun towards Shahnawaj hitting on his chest. Said Nishar during his testimony as PW-2 supported this version. PW-1 Ajmal also testified that Shamshuddin had fired upon Sehnawaj @ Sunny, hitting upon his chest, neck and other parts of the body.

(iv) Attention is further drawn towards statement of one of the injured Samina wife of Shabir, who also sustained firearm injury in the same incident as per the MLR, copy of which is placed on record, who clearly stated in her statement under Section 161 Cr.P.C. that Samsu @ Shamshuddin (petitioner) had fired shot from his gun towards her and that two of the pellets hit her in the back and one in her ribs.

(v) It is contended that in the face of above-said evidence, learned Trial Court did not commit any error in summoning the petitioner under Section 319 Cr.P.C. to face trial as an additional accused.

(vi) Learned counsel for the complainant also urged that petitioner manipulated the police and got himself declared as innocent, as despite the fact that more than 15 persons received firearm injuries and numerous people including petitioner were named in the FIR to be armed with guns and to have fired upon the injured party, still recovery of only one gun was effected from one Tarif, thus clearly indicating the collusion of the local police.

7. Opposing the petition for anticipatory bail, it is argued that petitioner is specifically named in the FIR to be one of the assailants, who was having gun and who along with others fired towards the complainant party. It is urged that FIR is not an encyclopaedia to contain all the minute details and that Chakriya, the author of the FIR though disclosed about injuries of some of the persons, but clearly stated that the injured will tell in detail about the injuries caused to them. It is urged that as the name of petitioner has been specifically disclosed to have fired upon Sehnawaj @ Sunny from his gun, therefore, considering the gravity of the offence, he does not deserve the benefit of anticipatory bail.

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

Analysis by the court and reasons for decision:

9. The issue regarding the scope and extent of power of the Court to arraign any person as an accused during the course of inquiry or trial in exercise of the power under section 319 Cr.P.C. has been set at rest by a Constitutional Bench of Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab, 2014**

(1) R.C.R. (Criminal) 623 followed by another pronouncement in **Babubhai Bhimabhai Bokhiria and Another Vs. State of Gujarat and others, 2014 (2) RCR (Criminal) (SC) 915.**

10. After reviewing various precedents, Hon'ble Apex Court summarized the legal position in **Hardeep Singh's case (cited supra)** in the following words:

"Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary power. it is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C."

11. After referring to aforesaid authority of Constitutional Bench, Hon'ble Supreme Court held in **Babubhai Bhimabhai Bokhiria's case (cited supra)** as under:

"Section 319 of the Code confers power on the trial court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of prima facie case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much

higher."

12. The above said issue was also considered by the Hon'ble Supreme Court in Criminal Appeal No. 397 of 2022 (Arising out of SLP (Crl) Nos. 7373 of 2021) titled '**Sagar Vs. State of UP & Another, Law finder Doc Id # 1955471**', decided on 10.03.2022, wherein the Hon'ble Supreme Court referred to **Hardeep Singh's case (supra)** and held that crucial test, which has to be applied, is one which is more than a prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction.

13. In light of the aforesaid legal position, when the facts of the present case are analysed, it is found that learned Trial Court has rightly come to the conclusion that there is more than *prima facie* case against the petitioner so as to face trial as an additional accused under Section 319 Cr.P.C.

14. It will also be not out of place to mention the observations made by learned Trial Court while dismissing the application under Section 319 Cr.P.C.. The relevant part of observations reads as under: -

*"It is conceded from both sides that name of accused Israaq has been mentioned in the FIR. The name of proposed accused **Samsu** son of Rustam and Asmina wife of Samsu, Subhan Khan son of Sirdar, Abdul Razak son of Rustam, Akhtari wife of Abdul Razak, Nargis wife of Subhan Khan have also been specifically mentioned in the FIR. However, complainant Chakariya has not alleged specific role against them but has stated in his complaint that the accused persons had caused firearm injury to his family members namely, Sabbir, Samina wife of Sabbir, Sehnaj daughter of Aakil, Ajmal son of Bobal, Mosim, Mubeen, Sahid, Sehkul, Iklash, Rati Mohammad, Wakib, Nobat, Latif, Sakir and Sahna wife of Mubeen. MLR of injured Nasim, Sabbir, Samina wife of Sabbir, Sakir, Sahid, Iklash, Hakam, Saddik, Moin, Mohammad Naseem, Latif, Ajmat, Sakil, Nobat and Mubeen placed on file. 14 prosecution witnesses do have firearm injury on their body. Whereas, Imran son of Sakil and Shahrukh had sustained firearm fatal injury. Therefore, total 16 persons including deceased have been given firearm injury whereas .12 bore gun has been recovered from accused Tarif only.*

*In statement under Section 161 of Cr.P.C. the injured persons namely, Mosim, Sahina, Sehnaj, Latif, Sakib, Sakir, Nobat, Rati Mohammad, Sahid, Nafish son of Abdul Rehman, Sabbir son of Mehmood, Samina, Iklash, Mubeen, Saikul, Nafish son of Abdul Rajjak and Nasim have categorically deposed against the proposed accused whereas PW Sahina has specifically levelled allegations of firing by proposed accused Israque son of Bashir upon him. Whereas Pws Mosim and Nasim have levelled allegation of firing by Abdul Rajjak son of Rustam upon them. Whereas, Pws Sakir, Nobat and Nafish have in their statements under Section 161 of Cr.P.C. alleged that proposed accused Subhan Khan son of Sirdar had given them firearm injury and complainant has named Shamshuddin to have given firearm injury to deceased as well as injured PW Samina and PW Mubeen has also alleged that proposed accused Shamshuddin @ Samsu son of Rustam had given firearm injuries to them. Therefore, allegations are specific against accused Israque son of Bashir, Abdul Rajjak, Subhan Khan and Shamshuddin. There are corresponding MLR of the witnesses sustaining firearm injuries. Therefore, there are ample evidence against them. The arguments of Learned Defence Counsel are not convincing. Whereas, there is specific allegation of use of firearm to cause specific injury by Asmina wife of Shamshuddin, Nargis wife of Subhan Khan and Akhtari wife of Abdul Rajjak. The police has also verified regarding their role. Therefore, in view of above-said observation it appears that accused proposed accused namely, **Samsu son of Rustam**, Subhan Khan son of Sirdar, Abdul Rajjak son of Rustam and Israque son of Bashir have committed the offence alongwith other co-accused who are facing the trial. Therefore, case of the prosecution are more than prima-facie case against them.”*

15. Thus, it is found that name of the petitioner Samsu @ Shamshuddin is specifically named in the FIR to be armed with gun, who along with numerous others caused gunshot injuries to various members of the complainant family. In case the names of Shahnawaj @ Sunny and Imran to be amongst the injured, do not find mention in the FIR, that in itself cannot be reason to doubt the prosecution, as it cannot be ignored that there were many members of accused party and number of the injured. In such a scenario, it cannot be noticed by all the injured as to which particular accused has caused gunshot injuries to whom. Besides, the presence of deceased Sehnawaj @ Sunny cannot be doubted having regard to the MLR pertaining to him placed on record, prepared on the date of occurrence itself and

showing that he had received firearm injuries in the occurrence, which had taken place on 16.06.2018 itself and who later on expired at a Jaipur hospital. Apart from the statement of PW-2 Nishar, who is the father of deceased Sehnawaj @ Sunny and who specifically disclosed in statement under Section 161 Cr.P.C. and also during trial that it is petitioner Samsu @ Shamshuddin, who had caused gunshot injury to Sehnawaj @ Sunny, another injured witness namely Samina has also corroborated this fact that Shamshuddin was armed with a gun and had given firearm injuries to her (Samina). PW1 also supported statement of PW2. Contradictions, if any in their statements is to be appreciated at the time of conclusion of trial.

16. It is very surprising that despite the petitioner being specifically named as one of the assailants, who was armed with gun and despite the fact that there was eye-witness account in the form of statements of at least Samina w/o Sabbir, & Nishar recorded under Section 161 Cr.P.C., the DSP, Nuh chose to declare the petitioner as innocent. As per the status report filed by the police, said petitioner was found innocent on verification of the investigation by Insp./SHO Vishal and Deputy Superintendent of Police Tauru Dharamvir Singh on the ground that respectable persons of the society had been joined during verification, who had stated that petitioner was not having any weapon at the relevant time and was trying to separate both the petitions. What it means is that police authorities at their own, disbelieved the version of eye-witnesses regarding the role of the petitioner and relied upon unknown ghost respectable members of the society so as to declare the petitioner as innocent, clearly indicating the collusion of the police with the petitioner.

17. Having regard to the entire discussion as above, this Court finds absolutely no illegality in the impugned order dated 06.07.2023 passed by learned Trial Court for summoning the petitioner Samsu @ Shamshuddin under Section 319 Cr.P.C. as an additional accused to face trial.

As such, revision CRR No: 1652-2023 is hereby dismissed.

18. As far as petition seeking grant of anticipatory bail is concerned, having regard to the role of the petitioner in the crime, who is specifically attributed to have given gunshot injury resulting in the death of Sehnawaj @ Sunny and also having caused gunshot injuries to Samina, and the gravity of the offence, but without commenting anything further on the merits of the case, this Court finds the present case to be unfit for grant of anticipatory bail, even if the petitioner has been summoned under Section 319 Cr.P.C. Simply because investigation is complete or petitioner is not required for custodial interrogation, cannot in itself be a ground to grant him anticipatory bail.

As such, CRM-M-41899-2023, seeking anticipatory bail is also dismissed.

19. It is made clear that none of the observations as made in this order by this Court should influence the mind of learned Trial Court while disposing of the case on merits.

September 26, 2023

Neetika Tuteja

**(DEEPAK GUPTA)
JUDGE**

Whether Speaking/reasoned: Yes

Whether Reportable : Yes