

(223)
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-44880-2023
Date of Decision: 30.11.2023

SARVESH

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CRM-M-57131-2023

YOGESH ALIAS DHOLA

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. R.K. Lathwal, Advocate
for the petitioner in CRM-M-44880-2023.

Ms. Neeru Bansal, Advocate
for the petitioner in CRM-M-57131-2023.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

JASJIT SINGH BEDI, J.

This order shall dispose of two petitions bearing No.CRM-M-44880-2023 titled as Sarvesh Versus State of Haryana and CRM-M-57131-2023 titled as Yogesh alias Versus State of Haryana as the same are arising out of the same FIR. However, for the sake of convenience the facts have been taken from CRM-M-44880-2023.

2. The prayer in the present petitions under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.30 dated 10.01.2022 registered under Sections 148, 149, 307 IPC, 1860 and Section 25 of Arms

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Act, 1959 (charge framed under Sections 307, 201(ii), 34 IPC and 25 of Arms Act) at Police Station Kundli, District Sonipat, Haryana.

3. The instant FIR came to be registered on the basis of a complaint made by Vishal son of Parvesh who stated that about 10/15 days ago, he had quarrel with Yogesh @ Dhola (petitioner in CRM-M-57131-2023) son of Jagat Singh which had been resolved with the intervention of the Panchayat. On 17.01.2022, he (complainant) along with his friend Ritesh son of Yogender was sitting in his car. In the meantime, Yogesh @ Dhola along with 4/5 persons came there and open fired with an intention to kill them (complainant party). Ritesh received gunshot injuries while he (complainant) hid himself.

Yogesh @ Dhola, Sarvesh (petitioner in CRM-M-44880-2023) and Ajay son of Narender were arrested in other cases on 26.01.2022 and suffered their disclosure statements stating that they had committed the present offence as well.

Thereafter, the statement under Section 161 Cr.P.C. of Ritesh and Parvesh was recorded on 05.02.2022 whereby they named the present petitioners.

4. The learned counsels for the petitioners contend that the complainant/Vishal has been examined as PW1, Ritesh as PW-13 and Parvesh as PW14. They have not supported the prosecution case and have been declared hostile. As the petitioners were in custody since 27.01.2022 and 18.01.2022 respectively, they were entitled to the concession of bail.

5. A reply dated 25.11.2023 by way of an affidavit of Mukesh Kumar, HPS, Assistant Commissioner of Police, Rai, Sonipat has been filed

in CRM-M-44880-2023 on behalf of the State by the learned counsel for the State. The same is taken on record. While referring to the reply, he contends that so far petitioner-Yogesh @ Dhola is concerned, he is named in the FIR and is the main accused. Even Sarvesh (petitioner in CRM-M-44880-2023) had fired at the complainant party. Recoveries had been effected from both. Therefore, they were not entitled to the concession of bail. He, however, concedes that witnesses stand examined and have not supported the prosecution case. He also concedes that the petitioners are in custody since 27.01.2022 and 18.01.2022 respectively and as many as 19 out of the 32 prosecution witnesses had been examined so far and 13 remain to be examined.

6. I have heard the learned counsel for the parties.

7. Admittedly, the three main witnesses namely, complainant-Vishal, Ritesh and Parvesh have been examined and have not supported the case of the prosecution. Whether the other evidence available on record is sufficient to affix liability upon the petitioners shall be adjudicated upon during the course of the Trial. The petitioners are in custody since 27.01.2022 and 18.01.2022 respectively, as many as 19 out of 32 prosecution witnesses have been examined so far and 13 prosecution witnesses remain to be examined. Therefore, the Trial of the present case is not likely to be concluded anytime soon. In this situation the further incarceration of the petitioners is not required.

8. Thus without commenting on the merits of the case, the present petitions are allowed and the petitioners are ordered to be released on bail on

their furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

9. The petitioners shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that they are not involved in any other crime other than the present case.

10. In addition, the petitioners (or anyone on their behalf) shall prepare an FDR in the sum of Rs.50,000/- each and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioners from trial without sufficient cause.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

30.11.2023

JITESH

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