



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-9214-2024 (O&M)

Reserved on: 01.10.2024

Pronounced on : 03.10.2024

JITENDER KUMAR @ JONY

. . . . Petitioner

Vs.

STATE OF HARYANA

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. A.S. Barnala, Advocate, for the petitioner.

Mr.RKS Brar, Addl. A.G. Haryana.

DEEPAK GUPTA, J.

By way of this petition filed under Section 439 CrPC, petitioner prays for grant of regular bail in case FIR No.13 dated 30.01.2019 (*Annexure P1*) under Sections 394, 395, 396, 397, 302, 120-B and 216 IPC and Section 25 of the Arms Act, 1959, registered at Police Station Sector 20, Panchkula [petitioner has been charge sheeted under Sections 394, 395, 396, 397 and 302 IPC read with Section 149 IPC and Section 27 of the Arms Act, 1959 vide order dated 04.12.2020].

2. This is petitioner's second petition for the purpose of bail. The earlier petition bearing CRM-M-40835-2022 was dismissed by this Court vide order dated 17.04.2023 (*Annexure P7*) along with two petitions pertaining to co-accused namely Raj Pal Singh @ Jaspreet Singh @ Jassi and Altaf Khan.

3. FIR in question was registered on the complaint of Vinod Kumar son of Pawan Kumar, resident of Sector 20, Panchkula, as per which, on 30.01.2019 at about 05:00/05:30 PM, he along with his 10-12 friends was playing cards in the showroom, in Sector 20, Panchkula, when 8-10 youths entered the showroom, all carrying weapons. 2-3 of them opened

fire at them and scared them by brandishing their pistols and asked them to hand over whatever cash or gold they had. Upon resistance by 2-3 of the complainant's companions, they were given beatings with the help of helmets. 2-3 of the intruders also fired shot at them. All of them took away all their cash, mobile phones, gold ornaments and fled away while firing upon them. One of the gun shot hit Sunny, who was taken to the hospital.

4. (i) Investigation was carried out. Spot was inspected. Empty cartridges, live cartridges, blood, mobile phones, driving licenses, helmets, LED and hard disc regarding CCTV footage, in which accused were captured from Katani Sweets near the place of occurrence, were taken into possession. Place of occurrence was also examined by team of scene of crime. On 31.01.2019, injured Sunny succumbed to the fire arm injury.

(ii) It was found during investigation that in case FIR No.95 of 2019 registered at Police Station Badapur, District Bijnor (UP) under Sections 302 and 307 IPC, accused Rohit had suffered disclosure statement to the Police that he along with Naveen, Hemant @ Lala, Vineet @ Vicky, Mohit and Sunil Kumar @ Rana had made the plan, as per which the dacoity was committed in the showroom of Panchkula by Kuldeep, Mohit and other boys, who had come from Delhi and that during the incident, one person had died. Hemant, Naveen and Sunil were arrested from time to time. Their disclosure statements resulted in recovery of some of the cash amount, mobile used in the crime and Swift car. It also emerged in the disclosure statement that planning to commit dacoity was made at House No.92, Sector 25, Panchkula.

(iii) During further investigation, petitioner herein was arrested on 09.06.2019. Based on the disclosure statement suffered by him during investigation, ₹3,000/-, gold ring and one mobile was recovered from him. He also disclosed the names of other persons, who had entered the showroom to commit dacoity as Raj Pal Singh, Irfan, Altaf and others. Raj Pal Singh was arrested on the same date i.e., 09.06.2019 and based on his disclosure statement, one mobile, ₹3,000/- and a sweat-shirt worn by him

at the time of crime which was also evident in CCTV footage, were recovered. Altaf Khan and Irfan were also arrested on the same day i.e., 09.06.2019 and recoveries of cash amount and mobile were made.

(iv) During further investigation, test identification parade was conducted on 10.06.2019 before learned jurisdictional Magistrate, Panchkula, in which all four of them i.e. petitioner (Jitender Kumar), Altaf Khan, Raj Pal Singh and Irfan were identified by the complainant. Customer application forms of petitioner (Jitender Kumar), Altaf Khan and Raj Pal Singh, besides Irfan confirmed their location near the place of occurrence. During further investigation, Kuldeep @ Baba, Mohit and Mahesh were also arrested. Rest of the accused including Vinay are yet to be arrested.

5. Final report under Section 173 Cr.P.C was filed against Hemant alias Lala, Naveen, Sunil Kumar, Jitender Kumar (petitioner), Raj Pal Singh, Irfan, Altaf Khan, Kuldeep, Rohit and Mohit. Charges were framed on 04.12.2020/23.12.2020. As per status report, out of 79 witnesses cited by the prosecution, 36 have been examined.

6.1 It is contended by Id. counsel that there is long list of prosecution witnesses and thus, trial is likely to take long time. Petitioner is already in custody for the last more than 5 years 3 months with no other case pending against him.

6.2 Id. counsel further contends that as per the prosecution version, petitioner is attributed to have fired shot from his pistol, which had hit on the leg of Manoj, but said Manoj during his testimony as PW7 did not identify the petitioner as per Annexure P2. It is further contended that material witnesses Rakesh Kumar-PW4, Salim Mohmmad-PW5 and Rajinder Kumar @ Jindri-PW9 have not supported the prosecution version and were declared hostile. Other witnesses namely, Sunil Kumar-PW3, Manoj-PW7, Amrit-PW8, Krishan Kumar-PW10, Deepak Gandhi-PW11, Sandeep-PW12, Monu-PW14, Sonu @ Angrej-PW15, Samson James-PW16 have though

deposed about their presence on spot at the time of accident, but denied to identify the accused.

6.3 Ld. counsel also contends that co-accused-Rohit Kumar was granted regular bail vide order dated 28.03.2022 vide Annexure P3. Some other co-accused have also been allowed bail and that as material witnesses have already been examined, so there is no chance of tampering or influencing the official witnesses and so, the petitioner be allowed bail.

7.1 Opposing the bail petition, Id. State counsel has drawn attention towards the earlier order dated 17.04.2023 passed by this Court, whereby all the circumstances were taken into consideration by this Court. The role of the petitioner was also noticed, who along with Raj Pal Singh @ Jaspreet Singh @ Jassi and Altaf Khan was found to have participated in the crime by actually entering into showroom, where they along with other companions had indiscriminately fired shots with their pistols resulting into one death and fire arm injury to others. Ld. State counsel further drawn attention towards testimony of PW1-Vinod Kumar, the complainant of the case, copy of which has been placed upon record by the counsel for the petitioner, which clearly indicates that the present petitioner along with three other co-accused have been duly identified by the said witness Vinod.

7.2 Though it is conceded by Ld. State counsel that petitioner is in custody for the last more than 5 years 3 months, but by pointing out towards the gravity of offence, prayer is made by rejecting the petition.

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

9. In the order dated 17.04.2023 (Annexure P7), whereby this Court had earlier rejected the bail petition of petitioner and two others, it is observed by this Court as under: -

“Having considered submissions of both the sides, this Court is of the view that petitioners do not deserve to be released on regular bail. As per the investigation, all the three accused were found to have participated in the

crime by actually entering the showroom, where they along with other companions indiscriminately fired shots with pistols, resulting in one death and fire-arm injury to other. They committed dacoity at the point of firearms. They were identified in the test identification parade conducted before learned Judicial Magistrate Ist Class. As far as grant of regular bail to the co-accused, namely, Hemant Kansal, Rohit, Naveen, Kuldeep alias Baba and Mohit is concerned, perusal of the bail orders pertaining to them would reveal that it was specifically observed that role attributed to them was in the nature of conspiring with the remaining accused inasmuch as they had conducted recce of the area and were present near the place of occurrence for doing help in case anything went wrong, when the other co-accused had barged into the showroom of the complainant but they had not actually entered the showroom. In these circumstances, the three petitioners cannot claim parity as attribution to them is entirely different. Apart from this, gravity of the offence cannot be ignored inasmuch as murder has been committed while committing dacoity. Most of the witnesses are yet to be examined. Possibility cannot be ruled out that petitioners may try to influence the witnesses, if enlarged on bail.

10. Apart from above, the testimony of PW1-Vinod would indicate that he has duly identified petitioner besides Raj Pal Singh @ Jaspreet Singh @ Jassi, Irfan and Altaf Khan to be the persons, who alongwith others had committed the crime by entering the showroom.

11. No doubt that custody of the petitioner is more than 5 years, but having regard to the gravity of offence and the role attributed to him in commission of crime, but without commending anything on the merits of the case, this Court is not inclined to grant benefit of bail to the petitioner.

Dismissed.

03.10.2024 <i>Vivek</i>	(DEEPAK GUPTA) JUDGE
<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>