



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-9020-2024

Shyam

.....Petitioner

Vs.

State of Haryana

.....Respondent

**Reserved On.: 14.05.2024
Pronounced On: 16.05.2024**

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By: Mr. Abhinav Sood, Advocate
for the petitioner.

Mr. Sumit Jain, Addl. AG, Haryana.

DEEPAK GUPTA, J.

By way of this petition filed under Section 439 Cr.P.C, petitioner prays for his release on regular bail in case FIR No.75 dated 04.06.2021 under Sections 120-B, 147, 149, 188, 269, 270, 302 IPC, 1860 and Section 25 of Arms Act, 1959 registered at Police Station Bahin, Tehsil and District Palwal.

2. Status report by way of an affidavit of Shri Suresh Kumar, HPS, Deputy Superintendent of Police, Hathin, District Palwal has been filed on behalf of respondent- State.

3.1 As per the prosecution version, on 03.06.2021, on getting information about the death of Digamber @ Diggall S/o Vijay, R/o Village Allika, from the Government Hospital, Palwal, police party reached there.

Saurabh S/o Virender, the cousin of deceased made a complaint, as per which

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his cousin Digamber @ Diggall (deceased) was on visiting terms with Dheer Singh, Sarpanch of Village Allika. Bharat Singh, the father of Dheer Singh had been earlier murdered in 2016 by Ex. Sarpanch Mahender and his companions. The trial of that case is pending in the Court. Digamber @ Diggall used to accompany Dheer Singh, Sarpanch during proceedings in that case and for that reason, accused and Mahender, Sarpanch and his companions were having grudges with Dheer Singh as well as Digamber @ Diggall. They used to threaten that in case Mahender, Sarpanch was convicted, they will eliminate the family of Dheer Singh, Sarpanch and Digamber @ Diggall.

3.2 It was further alleged by Saurabh that on 03.06.2021, his brother Digamber @ Diggall and Jasveer S/o Deshraj had gone to village Gehlab for some work. At about 8.45 p.m., they were talking while sitting on Gehlab Mitrol road near Amit Kirana Store. At about 9 p.m., on the orders of Mahender, Sarpanch, Vicky @ Vikash S/o Harender Lala; Rahul S/o Girraj @ Gullu; Hoshiyar S/o Rajender; Amit @ Salli S/o Mohan, Bhupender @ Bagheri; Lokesh Sagar S/o not known; and Shakti S/o not known along with 10-12 unknown persons came to the shop on 8-10 motorcycles holding illegal weapons like country made pistols and iron rods etc. in their hands. Vicky @ Vikash, Amit @ Salli, Rahul S/o Girraj @ Gullu and Bhupender @ Bagheri fired shots with their weapons at Digamber @ Diggall with an intention to kill him and also ran over motorcycle on him. The accused snatched the mobile of one Vishal and threatened them by showing weapons in the air. Dheer Singh, Sarpanch was called on his mobile and told that one of his men had been shot and now it was his turn and that in case, he messed with Mahender, Sarpanch,



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then he will have to face consequences. Digamber @ Diggall was taken to the Apex Hospital, but due to his serious condition, he was taken to Guru Nanak Hospital, Palwal. On the way, he succumbed to injuries.

4.1 FIR was registered. Postmortem examination of Digamber @ Diggall was got conducted. Physical evidence was collected from the spot and 04 empty cartridges & 02 live cartridges were recovered. During investigation, Amit @ Salli was arrested on 06.07.2021. His disclosure statement was recorded. Country made pistol and motorcycle used in the crime were got recovered by him. Said Amit @ Salli, in his disclosure statement not only admitted his involvement in the crime, he further disclosed the names of co-accused as Shyam (*petitioner herein*), Sushank @ Kittu, Jaipal Harijan, Lokesh, Devender Kohli, Mukesh, Vikky, Hoshiar and Rahul.

4.2 Sushank @ Kittu and petitioner - Shyam @ Rahul were taken on production warrant on 16.07.2021. They were joined in the investigation. They admitted their involvement in the crime. Sushank @ Kittu got recovered motorcycle used in the crime; whereas petitioner Shyam @ Rahul disclosed that he had already got recovered pistol in another case FIR No.466 of 2021, registered at Police Station Camp Palwal, under Sections 302, 384, 379-B of IPC and Section 25 of the Arms Act.

4.3 During further investigation, accused Hoshiyar was taken on production warrants on 10.08.2021 and was arrested with the permission of the Court. On interrogation, he suffered disclosure statement admitting his involvement in the crime. He also disclosed that country made pistol used by him in the occurrence had already been got recovered by him in case FIR

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No.372 of 2021, registered at Police Station Purani Sabji Mandi, Rohtak, under Section 25 of the Arms Act. Accused Rahul S/o Girraj @ Gullu was arrested on 14.09.2021. On interrogation, he suffered disclosure statement and disclosed that Aakash @ Bakachi and other companions were also involved in committing the murder of deceased Digamber @ Diggall.

4.4 On completion of investigation qua arrested accused Amit @ Salli, Sushank @ Kittu, petitioner - Shyam @ Rahul and Hoshiyar, challan was presented before the Area Magistrate on 01.10.2021.

4.5 Thereafter, co-accused Aakash @ Bakachi was arrested on 18.11.2021. On interrogation, he suffered disclosure statement admitting his involvement in the crime and demarcated the place of occurrence. On completion of investigation qua Rahul s/o Girraj @ Gullu and Aakash @ Bakachi, challan was presented in the Court on 09.12.2021. During further investigation, Vicky @ Vikash s/o Harender was arrested on 02.04.2022. He admitted his involvement in the commission of the crime during interrogation; demarcated the place of occurrence and got recovered pistol of .32 bore and 02 live cartridges. On completion of investigation qua said Vicky @ Vikash, supplementary challan was submitted before the Court on 22.06.2022.

4.6 Status report further reveals that Lokesh Sagar S/o Mahender, and Mukesh S/o Raghbar were found innocent during investigation. One more accused Jagpal S/o Girraj was arrested on 18.04.2023. He suffered disclosure statement, admitting his involvement in the crime. Supplementary challan qua him was submitted in the Court on 10.07.2023.

5. It is contended by learned counsel for the petitioner that petitioner

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has been falsely implicated; that he is not named in the FIR and has been implicated only on the basis of disclosure statement of co-accused; that investigation is already complete; that material witnesses have already been examined and none of them have disclosed any role of the petitioner in the crime. Learned counsel further contends that co-accused Aakash @ Bakachi, Hoshiyar and Sushank @ Kittu have already been allowed bail by this Court vide a common order dated 29.01.2024, copy of which is Annexure P-11; that petitioner is in custody for the last more than 02 years and 09 months and trial is likely to take long time to conclude and so, he be allowed bail.

6. Opposing the bail petition, learned State counsel contends that name of the petitioner emerged in the disclosure statement of co-accused Amit @ Salli and that arrest of the accused led to the recovery of country-made pistol, which he had got recovered in another case FIR No.466 of 2021, registered at Police Station Camp Palwal, under Sections 302, 384, 379-B of IPC and Section 25 of the Arms Act. However, it is conceded by learned State counsel that role of the petitioner is not disclosed by the material witnesses examined during trial and that co-accused Aakash @ Bakachi, Hoshiyar and Sushank @ Kittu have already been allowed bail. By pointing out towards the gravity of the offence, prayer is made for rejecting the bail petition.

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

8. As per the FIR version, it is Vicky @ Vikash, Amit @ Salli, Rahul son of Girraj @ Gullu & Bhupender @ Bhageri, who had fired shots at deceased Digamber @ Diggall. Name of the petitioner does not find mention in



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the FIR to be amongst assailants. His name has surfaced only in the disclosure statement of co-accused Amit @ Salli. No specific attribution or any overt act is attributed to the petitioner. The status report filed by the respondent- State is silent as to whether the recovery of pistol effected from the petitioner in another case has any connection with the present occurrence.

9. Further, the statements of prosecution witnesses namely Vishal (PW-2), Ravinder (PW-3) and Jasveer (PW-7), copies of which have been placed on record by petitioner as Annexure P-3, P-4 & P-7 would reveal that none of them have named the petitioner to be amongst the assailants. PW Saurabh, the author of the FIR stated during his testimony (Annexure P-2) that he was not present at the time of occurrence. Although PW-2- Vishal named Hoshiyar, Amit @ Salli, Rahul, Bhupender @ Bagheri and Vicky @ Vikash in his testimony but not the petitioner. PW Jasveer, the alleged eye-witness is quite specific in his testimony that Shyam i.e. the present petitioner was not amongst the assailants.

10. Co-accused Aakash @ Bakachi, Hoshiyar and Sushank @ Kittu have already been allowed bail by this Court vide a common order dated 29.01.2024 (Annexure P11) passed in CRM-M-39631-2022; CRM-M-59784-2022 & CRM-M-61768-2023.

11. Apart from above, the custody certificate would reveal that petitioner is in custody in the present case for the last 02 years 09 months and 28 days, though involved in various other cases as well. The status report also reveals that only 09 witnesses have been examined so far out of 54 witnesses cited by the prosecution and therefore, considering the long list of witnesses,

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conclusion of trial is likely to take long time to conclude. Material witnesses have already been examined.

12. Having regard to all the above facts and circumstances, but without commenting anything further on the merits of the case, this petition is allowed. Petitioner is admitted to bail on his furnishing bail bonds/surety bonds to the satisfaction of the Learned Trial Court/Duty Magistrate concerned, on usual terms and conditions.

(DEEPAK GUPTA)
JUDGE

May 16, 2024

Neetika Tuteja

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No