



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

CRM-M-26661-2024
Date of decision : 19.09.2024

MANDEEP ALIAS BACCHA
.....Petitioners

Versus

STATE OF HARYANA
...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Ms. Neeru Bansal, Advocate
 for the petitioner.

 Mr. Apoorv Garg, Sr. DAG, Haryana.

PANKAJ JAIN, J. (ORAL)

 This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.269 dated 19.06.2021 registered for the offences punishable under Sections 302 IPC (Sections 120-B, 212, 404, 34 IPC, 1860 added later on) and Section 25 of Arms Act, 1959 at Police Station Sadar Sonipat, District Sonipat.

- 2. At the outset, counsel for the petitioner prays that the present petition be treated to be the one under Section 483 of the BNSS 2023.
- 3. The prayer is allowed.
- 4. FIR was registered on the basis of the statement made by father of the deceased who alleged as under:

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“Sir, it is requested that I am Surender S/o Rann Singh R/o Village Tihar Malik presently residing at Mayur Vihar Gali No. 22 House No. 396/30 along with my children since year 1993. I am working as a Truck Driver. I have two sons. The elder son is Sagar and the younger one is Sawan. My elder son Sagar has solemnized love marriage with Bhumika 4 months back and my younger son is confined in Sonipat Jail. Today on dated 19.06.2021 at about 5:30/6 PM, he went out of home on his motorcycle bearing no. HR10AK9697 by saying to me that "Papa my friends are confined inside Sonipat jail and I am going to meet my friends who will help their companion my brother Sawan in Sonipat Jail." He was having his mobile having number 9467273362, 8307958552. When I dialed my son number then his both numbers were switched off. When I was searching my son Sagar then I came to know that someone has killed a young boy towards Kakroi Village at Baiyanpur Miner, Sonipat Mahlana Road. On knowing this, I went there. Someone told me there that Police has taken the dead body to Government Hospital Sonipat. I have carefully seen and identified the dead body lying at Dead House Sonipat. The dead body is of my son Sagar. Some unknown gangsters have shot and murdered by son while keeping grudges. Legal action be taken against them. Sd/- Surender. Dated 19.06.2021 at 11:20 P.M.”

5. The case of the prosecution against the petitioner is based upon the recovery of a pistol which as per the State has matched the bullets recovered from the dead body.

6. Ld. Counsel for the petitioner has drawn attention of this Court to the FSL/Ballistic Report. As per which, result of the examination reveals as under :

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Result of Examination

1.

The Countrymade pistols marked as W/1 & W/2 (each Chambered for .315” cartridges) are firearms as defined in Arms Act 54 of 1959. Their firing mechanisms were found in working order.
2.

The Countrymade pistol marked as W/2 had been fired through. However, scientifically the time of its last firing cannot be given.
3.

The .315" fired cartridge case marked as C/1 and .315" fired bullets marked as BC/1 & BC/2 have been fired from the Countrymade pistol marked as W/1 and not from any other firearm even of the same make and bore/calibre because every firearm has got its own individual characteristic marks.
4.

The holes on the shirt contained in parcel No. 2 have been caused by firearm projectiles.
5.

Report in original from Serology Division is enclosed herewith.
7.

She submits that the description of article(s) contained in parcel(s) has been tabulated at Page 19 of the paper-book i.e. the first page of the Ballistice Report which reads as under :

Description of article(s) contained in parcel(s)

Barcode No.	Parcel No.	No. & seal impression	Description of parcel (s)/ Exhibit (s)
FSL 32315-210910-1310477 PS: 32315-210908-84855	1	6(VC)	Contained two .315 á€ fired bullets stated to have been taken out from the body of deceased in ref PMR No. BD/PMR/166/AC/GJ/SNP/2021 DT -20.06.2021. (Bullets marked as BC/1 & BC/2 by me).
FSL 32315-210910-1310481 PS: 32315-210908-84856	2	8(VC)	Contained clothes of deceased in reference PMR BD/PMR/166/AC/GJ/SNP/2021 DT – 20.06.2021 (First examined in the Ballistics Division and then sent to Serology Division).

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FSL 32315-210910-1310483 PS: 32315-210908-84857	3	4(KS)	Contained one .315  fired cartridge case stated to have been collected from the place of occurrence (Cartridge case marked as C/1 by me).
FSL 32315-210910-1310484 PS: 32315-210908-84858	4	5(RK)	Contained one Countrymade pistol (Chambered for .315  cartridges) along with one .315  live cartridge stated to have been recovered from accused No.1 (Pistol make as W/1 by me).
FSL 32315-210910-1310486 PS: 32315-210908-84859	5	5(RK)	Contained one Countrymade pistol (Chambered for .315  cartridges) along with one .315  live cartridge stated to have been recovered from accused No.2 (Pistol marked as W/2 by me).

8. She thus submits that on conjoint reading of the two, it is evident that the pistol that matched the bullets recovered from the body of the deceased was marked as W/1 and the same was recovered from accused No.1 and at no place it is mentioned that the petitioner is accused No.1. The petitioner was not arraigned as accused No.1 either in FIR or in report under Section 173 Cr.P.C. Thus, the vital link that could connect the petitioner along with the pistol that matched as per the Ballistic Report with the crime, is missing.

9. Per contra, counsel for the State however submits that the link has been fully explained in Para No.7 of the status report. The same reads as under :

“7. That it is submitted that accused No.1 in the present case is the petitioner/accused Mandeep @ Baccha from whom the pistol W/1 was recovered, whereas the another pistol W/2 was recovered from co-accused Parvesh. The basis of this identification of name of accused persons is that at the time of recovery of country made pistols from accused Mandeep @ Baccha and Parvesh with one live cartridges each, the rough sketches of the recovered pistols

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and cartridges were prepared and in the said sketches, name of respective accused were specifically mentioned. As per the rough sketches of pistols, there is difference in the shape of both the pistols. While sending the case property to FSL, serial number of parcels were mentioned on the parcels as well as in the docket, in which was mentioned that parcel No.4 contained the pistol and live cartridge recovered from accused No. 1, It is submitted that the parcels containing the case property have already been opened during prosecution evidence before the learned trial Court. With a view to establish the identity of accused from whom weapon W/1 was recovered, the case property contained in the parcels was compared with the rough sketches of the recovered pistols from accused Mandeep and Parvesh, which revealed that the pistol which was sealed/sent to FSL in parcel No.4 was the pistol, which was recovered from petitioner Mandeep and as per FSL report also, the pistol marked as W/1 was in parcel No.4, which clearly shows that the pistol W/1 which has matched with the bullets C/1 as well as BC/1 and BC/2 was recovered from petitioner/accused Mandeep @ Baccha.”

10. He submits that two pistols were recovered. One from the petitioner and the other from the co-accused. Both of them were different in shape. Rough sketch of the pistol was drawn after the same was recovered from both of the accused. W/1 pistol as mentioned in the Ballistic Report tallies with the rough sketch that was drawn after the pistol was recovered from the present petitioner. He further submits that the petitioner is a habitual offender having more than 4 cases against him apart from the present FIR.

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11. Custody certificate has been produced, which is taken on record. As per the same, the petitioner has already undergone incarceration for more than 3 year and 20 days. The trial has proceeded considerably as the material witnesses already stand examined.
12. I have heard counsel for the parties and have gone through records of the case.
13. Without commenting on the merits of the case, keeping in view the incarceration already suffered by the petitioner, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.
14. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

September 19, 2024
Dpr

(Pankaj Jain)
Judge

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