

CRM-M-39631-2022 Neutral Citation No. 2024:PHHC:011249
CRM-M-59784-2022 Neutral Citation No. 2024:PHHC:011254
CRM-M-61768-2023 Neutral Citation No. 2024:PHHC:011256

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: January 25, 2024
Pronounced on: January 29, 2024

- I.

CRM-M-39631-2022

Aakash @ Bakachi

...Petitioner

Versus

State of Haryana

...Respondent
- II.

CRM-M-59784-2022

Hoshiyar

...Petitioner

Versus

State of Haryana

...Respondent
- III.

CRM-M-61768-2023

Sushank @ Kittu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Narender Singh Tewatia, Advocate
for the petitioner in CRM-M-39631-2022.

Mr. Deepender Singh and Mr. Harsh Jain, Advocates
for the petitioner in CRM-M-59784-2022.

Mr. Abhinav Sood, Advocate
for the petitioner in CRM-M-61768-2023.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.

In the three petitions titled above, all filed under Section 439

Cr.P.C., petitioners have prayed for their release on regular bail in case FIR

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No.75 dated 04.06.2021, under Section 148, 149, 206, 270, 302, 120-B and 188 of IPC, besides Section 25 (Act No.54 of the Arms Act, 1959) (hereinafter referred as 'the Arms Act'), registered at Police Station Bahin, District Palwal, Haryana.

2. Separate status reports on behalf of respondent-State have been filed in CRM-M-39631-2022, titled “*Aakash @ Bakachi v. State of Haryana*”; and CRM-M-59784-2022, titled “*Hoshiyar v. State of Haryana*”. Learned State counsel made specific statement that as all the three petitions pertain to the same FIR, therefore, the status reports as filed in CRM-M-39631-2022 and CRM-M-59784-2022 may also be considered for the connected petition bearing No.CRM-M-61768-2023 titled as “*Sushank @ Kittu v. State of Haryana*”.

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 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

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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 (*petitioner in 59784-2022*) 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, 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.

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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.

4.2 Sushank @ Kittu (*petitioner in CRM-M-61768-2023*) and Shyam @ Rahul were taken on production warrant on 16.07.2021. They were joined in the investigation. They admitted their involvement in the crime. Petitioner - Sushank @ Kittu got recovered motorcycle used in the crime; whereas Shyam @ Rahul disclosed that he had already got recovered pistol in another case FIR No.466 of 2021, registered at Police Statin Camp Palwal, under Sections 302, 384, 379-B of IPC and Section 25 of the Arms Act.

4.3 During further investigation, accused-petitioner 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 No.372 of 2021, registered at Police Station Purani Sabji Mandi, Rohtak, under Section 25 of the Arms Act.

4.4 Accused Rahul S/o Girraj @ Gullu was arrested on 14.09.2021. On interrogation, he suffered disclosure statement and

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disclosed that Aakash @ Bakachi (*petitioner in CRM-M-39631-2022*) and other companions were also involved in committing the murder of deceased Digamber @ Diggal. On completion of investigation qua arrested accused Amit @ Salli, petitioner - Sushank @ Kittu, Shyam @ Rahul and petitioner – Hoshiyar, challan was presented before the Area Magistrate on 01.10.2021.

4.5 Thereafter, petitioner – 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.

4.6 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.

4.7 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.

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5. On behalf of petitioner Aakash @ Bakachi, it is contended that he has been falsely implicated having no nexus with the crime; that he is not named in the FIR; that he has been arrested simply on the basis of disclosure statement of co-accused, which is not admissible; that investigation qua him is already complete; that the trial may take time to conclude, so he be allowed bail. This petitioner has also given details of three other cases, in which he is involved, out of which he is stated to have been acquitted in two cases and that is on bail in the third case.

6. On behalf of petitioner Sushank @ Kittu, similar contentions are made to the effect that he was not named in the FIR; that he is in custody for the last more than 02 years and that investigation is already complete; that trial may take time to conclude. Learned counsel has also drawn attentions towards the testimony of witnesses, namely, Vishal – PW2, Ravinder – PW3 and Jasveer – PW7, so as to contend that none of them have named the petitioner to be the participant in the crime. Submitting that the material witnesses already stand examined, prayer is made for grant of regular bail. This petitioner has also given details of three more cases, in which he is involved, out of which he is acquitted in one case and that is on bail in two other cases.

7. On behalf of petitioner Hoshiyar, though it is conceded that he is named in the FIR, but it is pointed that no overt act is attributed to him. The allegation of firing is attributed only to co-accused Vicky @ Vikash, Amit @ Salli, Rahul and Bhupender @ Bagheri. Learned counsel also

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submits that Pws Jasveer and Vishal improved their version during trial by stating that accused Hoshiyar had exhorted other accused to fire shots. No such attribution was made by them either in the statement under Section 161 Cr.P.C. nor in the statements recorded under Section 175 Cr.P.C. Learned counsel further contends that PW1-Saurabh, the complainant of the case is not an eye witness. Besides he has not attributed firing of the shot on the part of petitioner – Hoshiyar. Learned counsel also contends that trial is likely to take a long time and having regard to the custody period, petitioner be allowed bail. It is also submitted that petitioner is involved in one more case pertaining Section 25 of the Arms Act.

8. Learned State counsel has opposed all the three petitions by pointing out towards the gravity of the offence and the manner in which Digamber @ Diggall was brutally murdered by firing shots indiscriminately by the petitioners and the co-accused. Though, it is conceded that names of petitioners Aakash @ Bakachi and Sushank @ Kittu are not mentioned in the FIR, but attention is drawn towards the fact that name of petitioner Aakash @ Bakachi surfaced in the disclosure statement of co-accused Rahul S/o Girraj @ Gullu. Attention is further drawn towards the fact that PW2 – Vishal and PW7 – Jasveer have specifically testified during trial that petitioner Hoshiyar had exhorted others to kill Digamber @ Diggall by stating that he was the supporter of Dheer Singh and it is only thereafter that Vicky @ Vikash had fired shot in the head of Digamber @ Diggall. Prayer is made by learned State counsel to reject all the petitions.

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

10. As per custody certificate, petitioner – Aakash @ Bakachi is in custody since 18.11.2021, i.e. for the last more than 02 years and 02 months. Petitioner – Sushank @ Kittu is in custody since 16.07.2021, i.e. for the last more than 02 years and 06 months. As per custody certificate of petitioner – Hoshiyar, he is in custody since 09.08.2021, i.e. for the last more than 02 years and 05 months.

11. Taking the case of petitioner – Hoshiyar, no doubt that he is named in the FIR to be amongst the assailants, who had come to the spot armed with illegal weapons like country made pistol etc. However, FIR is quite specific to the effect that it is Vicky @ Vikash, Amit @ Salli, Rahul S/o Girraj @ Gullu and Bhupender @ Bagheri, who had fired shots at deceased Digamber @ Diggall. In the FIR version, no specific attribution or any overt act is attributed to petitioner – Hoshiyar. Even in his testimony as PW1, Saurabh - complainant of the case has made the same version, but it has come in his cross-examination that he is not the eye witness and that he narrated the occurrence as per the information given to him by eye witnesses, namely, Vishal, Jasveer and Gaurav. As pointed out by learned counsel for the petitioners that Vishal and Jasveer in their testimonies stated for the first time that Hoshiyar had exhorted the others to kill Digamber @ Diggall, as he was the supporter of Dheer Singh. However, during cross-examination, Vishal admitted that this part of his

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statement, i.e. exhortation by Hoshiyar, is not mentioned in this statement Ex.D2 made during investigation. Similarly, as is contended by learned counsel, PW7 – Jasveer had not made any such statement during investigation and prima facie, both of them improved their version.

12. Coming to the case of petitioner – Aakash @ Bakachi, he is not named in the FIR. He is not named by any of the witnesses. His name surfaced only in the disclosure statement of co-accused Rahul S/o Girraj @ Gullu. PW2 – Vishal admitted during the cross-examination that he had not named Aakash @ Bakachi to be amongst assailants either in his statement made during investigation nor during examination-in-chief. Similarly, PW 7 -Jasveer admitted that he had not named Aakash @ Bakachi in his statement under Section 161 Cr.P.C. to be amongst the assailants.

13. Coming to the case of petitioner – Sushank @ Kittu, he is also not named in the FIR. Neither PW1 - Saurabh nor PW 2 - Vishal named this petitioner to be amongst assailants. PW7 – Jasveer has specifically stated that Sushank @ Kittu was not amongst the assailants.

14. Apart from above, it has already been observed that all the three petitioners are in custody for the last more than 02 years. Status report reveals that out of 54 witnesses cited by the prosecution, 09 had been examined till 13.12.2023 and so, considering the long list of prosecution witnesses, conclusion of the trial is likely to take long time. Material witnesses already stand examined.

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15. Having regard to all the aforesaid facts and circumstances, the role attributed to the petitioners in the crime, the likelihood of delay in conclusion of trial and the custody period, but without commenting further anything on the merits of the case, all the three petitioners are admitted to bail. They are ordered to be released on bail on their furnishing requisite bail bonds and surety bonds to the satisfaction of learned Trial Court/Duty Magistrate concerned, on usual terms and conditions.

16 All the aforesaid petitions are allowed. To remove any doubt, it is made clear that nothing observed in this order shall influence the trial court while disposing of the case on merits.

Photocopy of this order be placed on the connected case files.

January 29, 2024
Sarita

(DEEPAK GUPTA)
JUDGE

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