

CRM-M-47519-2023

Neutral Citation No. 2024:PHHC:023309

CRM-M-1045-2023

Neutral Citation No. 2024:PHHC:023311

CRM-M-50649-2023 (O&M)

Neutral Citation No. 2024:PHHC:023315

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: February 16, 2024
Pronounced on: February 20, 2024

I.

CRM-M-47519-2023

Dayal Dass

...Petitioner

Versus

State of Punjab

...Respondent

II.

CRM-M-1045-2023

Hemant Kumar @ Madho

...Petitioner

Versus

State of Punjab

...Respondent

III.

CRM-M-50649-2023 (O&M)

Hemant Kumar @ Madhu Dass

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:

HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By -

Mr. Japjit Singh Johal, Advocate for the petitioner in CRM-M-47519-2023.

Mr. Ish Karan Singh Chhabra, Advocate for Mr. Sukhdeep Singh, Advocate for the petitioner in CRM-M-50649-2023 and CRM-M-1045-2023.

Mr. Sahil R. Bakshi, AAG, Punjab.

Mr. K.S. Brar, Advocate for the complainant.

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DEEPAK GUPTA, J.

This order shall dispose of 03 petitions titled above, as all of them have arisen out of the proceedings of the same occurrence.

2.1 In CRM-M-47519-2023 filed under Section 439 Cr.P.C., petitioner Dayal Dass (*one of the accused in the case*) prays for his release on regular bail in case FIR No.56 dated 12.05.2017 under Sections 302, 307, 450, 295, 148, 149, 120-B of IPC, besides Sections 25 and 27 of the Arms Act, 1959, registered at Police Station Tappa Mandi, District Barnala.

2.2 This is the 5th petition before this Court. The first two petitions bearing Nos.CRM-M-48543-2017; and CRM-M-44789-2018 were dismissed as withdrawn vide orders dated 24.09.2018 and 12.03.2019 respectively (Annexures P-14 & P-15). The third petition bearing No.CRM-M-37880-2019 was dismissed on merits after considering all the contentions of petitioner by this Court vide order dated 22.01.2021 (Annexure P-16). The fourth petition bearing No.CRM-M-22579-2021 was dismissed vide order dated 28.10.2022 (Annexure P-17), after it was informed to the Court that case had reached at the stage of final arguments and thus, trial was likely to be concluded in near future.

3. In CRM-M-1045-2023 filed under Section 482 Cr.P.C., by one another accused of the case Hemant Kumar @ Madho, prayer is made to quash the order dated 13.03.2019 passed by learned Addl. Sessions Judge, Barnala, whereby application moved by the petitioner under

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Section 173(8) Cr.P.C. was dismissed.

4. In CRM-M-50649-2023 filed by accused Hemant Kumar @ Madhu Dass under Section 482 Cr.P.C., prayer is made to quash the order dated 31.08.2023 passed by learned Trial Court, whereby application moved by him during defence evidence for summoning of a DVR during the trial, was dismissed.

Background Facts:

5.1 Status report as filed in CRM-M-47519-2023 would reveal that FIR was lodged on the statement of Mahant Gopal Dass on 12.05.2017, as per which, he is Mohtmim of a Dera at Tappa, District Barnala. On that day at about 6.15 a.m., he was doing worship in the Dera. Other priests/sewadars Laxmi Naraian, Ram Dayal, Bhupinder Das, Gulab Ram, Nikka Khan, Raghubir Dass, Krishan Das and Mehnga Ram were participating in the worship ceremony. It is at that time that **Hemant Kumar @ Madho (petitioner in CRM-M-1045-2023 and CRM-M-50649-2023)** armed with pistol, Raghunandan Dass armed with .12 bore rifle, Rameshwar Dass armed with *gandasa*, Varinder Kumar armed with 12 bore rifle, Ramesh Kumar @ Meshi armed with spade, **Dayal Dass (petitioner in CRM-M-47519-2023)** armed with spade, Govind Dass armed with stick, Bhuvneshwar Dass @ Sudhama armed with pistol and Kapil Kumar armed with stick, suddenly entered in the Dera and started throwing bricks, stones and firing gun shots. As Laxmi Naraian came out, Hemant Kumar @ Madho fired bullets on said Laxmi Naraian and Gulab

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Ram. Other persons, namely, Ram Dayal, Nikka Khan, Raghbir Dass, Krishan Dass and Mehanga Ram also suffered fire arm injuries. The assailants caused destruction of sacred pictures and fled away along with their weapons. Injured were taken to the hospital, where Laxmi Naraian was declared dead. Later on, Gulab Ram also succumbed to his injuries on the way. The reason for the occurrence was that Rameshwar Dass was declaring himself to be the Chela of Parmanand, despite the fact that a civil dispute had already been decided in favour of the complainant and that accused/assailants had attacked to grab the Dera and its land.

5.2 Necessary investigation was conducted. Accused – Dayal Dass (petitioner in CRM-M-47519-2023) was arrested on 14.05.2017. Some other accused including Hemant Kumar @ Madho were also arrested. After concluding the investigation, final report under Section 173 Cr.P.C. was filed.

5.3 It has not been disputed before this Court that after conclusion of the prosecution evidence and recording the statement of the accused under Section 313 Cr.P.C., the case has reached at the stage of defence evidence/arguments.

6. It emerges that GDR No.15 dated 19.05.2017, under Sections 323, 148 and 149 of IPC was registered on the statement of co-accused Hemant Kumar @ Madho (*petitioner in CRM-M-1045-2023 and CRM-M-50649-2023*) by contending that on 12.05.2017 at about 6:15 AM, as he was doing Sewa in the Thakur Duara, Laxmi Narain (deceased), Gulab

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Ram (deceased) and others entered the Dera while raising *Lalkara* and came near his brother Bhuvneshwar Dass. As he tried to run towards a room, Bhupinder @ Minta fired in the air from his gun. He went inside the room, where his brother Bhuvneshwar also joined him. They bolted the room, when assailants started breaking the door. Laxmi Narain was asking them to come out and Gulab started breaking the door. He (Madhav) then fired from his licensed revolver in the air. When they came out, Laxmi Narain was lying fallen. He was not aware as to whether firearm from his pistol or that of Bhupinder hit Laxmi Narain. On this statement, the GDR was recorded.

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7.1 It is contended by learned counsel for petitioner Dayal Dass that after dismissal of the third petition for grant of bail on merits, vide order dated 22.01.2021 (Annexure P-16) and then the dismissal of the fourth petition on 28.10.2022 (Annexure P-17) on the ground that case had reached at the stage of final arguments, the trial has not proceeded further because vide order dated 10.01.2023 (Annexure P-12) passed in CRM-M-1045-2023, trial Court was directed not to pass final judgment in the case.

7.2 Learned counsel for the petitioner contends that now custody period of the petitioner is more than 06 years and 08 months and pronouncement of the final judgment has been stayed and so, taking into consideration all these circumstances, petitioner be allowed bail.

8. Opposing the petition, Learned State counsel contends that it

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is a double murder case, in which petitioner is one of the main assailants/participants of the crime. He also submits that as the fourth bail petition of petitioner – Dayal Dass was dismissed after observing that case has reached at the final stage, so petitioner does not deserve to be released on bail because prosecution is not at fault for non-conclusion of the trial, as it is the accused, who are moving one after the other applications, so as to delay the proceedings.

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9.1 During trial of case FIR No.56 dated 12.05.2017, accused Hemant Kumar @ Madho moved an application before the Trial Court submitting that no investigation was carried out on the GDR No.15 dated 19.05.2017 lodged by him. Prayer was made by him to direct the police to investigate the allegations contained in the GDR and to file a report under Section 173(8) Cr.P.C. That application was dismissed by the Trial Court vide order dated 13.03.2019, which order has been assailed by said accused Hemant Kumar @ Madho by filing CRM-M-1045-2023.

9.2 It is contended by learned counsel for the petitioner - Hemant Kumar @ Madho that GDR in question was registered as a cross case of FIR No.56 of 2017; that police was duty bound to complete the investigation in the cross case and that as per settled preposition of law, cross cases are required to be tried together, irrespective of the nature of offence involved, so as to avoid conflicting judgments regarding the same incident.

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10.1 In reply to the aforesaid petition, it has been submitted by the respondent-State that though the impugned order dismissing the application under Section 173(8) Cr.P.C. was passed by the Court on 13.03.2019, but it has been challenged by the petitioner only in the year 2023. No revision under Section 397 Cr.P.C. was filed against the said order. No explanation for delay has been given for filing this petition and that too by invoking extra ordinary powers under Section 482 Cr.P.C. Besides, petitioner could have filed complaint under Section 200 Cr.P.C. against the opposite party, but he preferred not to do so.

10.2 Respondent-State further submitted that petition is based upon the alleged inaction of the Investigating Agency after recording the GDR in question, but petitioner concealed the material facts from the Court. It is submitted that on 13.05.2017, i.e. next date of the occurrence, when Inspector Shamsheer Singh, S.H.O. Police Station Tappa, went to Adesh Hospital, Bhuchio Mandi, Bathinda, petitioner – Hemant Kumar @ Madho, was found fit for making statement. At that time, Hemant Kumar @ Madho not only admitted to have caused injuries to the other party, he further claimed to have sustained injuries at the hand of the opposite party, but also stated that he would make the statement after consulting his relatives. At that time, petitioner – Hemant Kumar @ Madho made a statement (copy Annexure R-1) to the effect that he was having some dispute with Laxmi Narain and others, in which injuries were given by him to them and he too had received injuries and that he will get his statement recorded after consulting with his relatives and that he did not

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want any legal action to be taken.

10.3 It is submitted further that version given in GDR No.15 dated 19.05.2017 was a belated counter version. After conducting necessary investigation, the GDR in question was cancelled and was not to be treated as a cross case. The entry to this effect was made in case diary No.20 dated 16.07.2017, copy of which is Annexure R-2.

11. Learned State counsel submits that this CRM-M-1045-2023 has been filed after more than 04 years of the dismissal of the application by the Court, just as an excuse, so that Trial Court does not conclude the trial, which had already reached at the stage of defence/arguments. It is specifically pointed out that after dismissal of application under section 173 (8) CrPC way back on 13.3.2019, petitioner Hemant @ Madho along with others participated in the trial, which has reached at the stage of defence evidence, without there being any revision against the impugned order and now this petition has been filed as an afterthought at the fag end of the trial just to delay the conclusion of trial.

12. To a specific query put by this Court as to whether any cancellation report had been filed in the Court in respect of GDR No.15 of 19.05.2017, additional reply has been filed by the respondent-State, which has been placed on the file of CRM-M-47519-2023, wherein it is submitted that though the cancellation was prepared way back in July, 2017, but the cancellation report has been filed in the Court on 14.02.2024.

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13.1 In this petition, challenge is given by accused Hemant Kumar @ Madhu Dass to an order dated 31.08.2023, whereby the Trial Court dismissed an application moved by him to summon a DVR in the defence evidence during trial of FIR No. 56/2017 as above.

13.2 It was contended that one of the accused named in the FIR, namely, Rameshwar Dass was not present at the Dera at the time of alleged occurrence and rather, at that time he was present at Dera Baba Siri Chand Nanak Chakk, Tehsil Batala, District Gurdaspur and so, the version of the complainant got falsified. The DVR was sought to be summoned so as to prove the footage showing the presence of co-accused Rameshwar Dass in a Dera at Batala. It was also submitted that DVR was taken into custody by the police during investigation, but was not produced during trial. Petitioner moved an application before the Court seeking direction to produce the DVR but that application has been dismissed vide order dated 31.08.2023.

13.3 Learned counsel for the petitioner contends that by production of the DVR, the entire case of the prosecution shall be falsified, including regarding the presence of co-accused Rameshwar Dass at the time of incident, though he is alleged to be present at the time of occurrence with a *gandasa*.

14. Opposing the aforesaid petition, learned State counsel submits that petitioner cannot be allowed to plead the case of co-accused Rameshwar Dass, who has already been declared as proclaimed offender.

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Learned State counsel also submits that co-accused Rameshwar Dass had approached this Court seeking anticipatory bail by filing CRM-M-25574-2017, but the same was dismissed by this Court vide order dated 09.01.2019, copy of which has been placed on record.

15. I have considered submissions of both the sides and have apprised the record carefully.

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16. GDR No.15 dated 19.05.2017 was got recorded after 07 days of the incident. Initially on 13.05.2017, petitioner Hemant Kumar @ Madho had made a statement before the Investigating Officer to the effect that he did not want to take any legal action and will make the statement after consulting his relatives. It is 06 days thereafter that he got lodged the GDR. The version given in the GDR was duly investigated and same has been found to be false. Cancellation report was prepared in 2017 itself. Although, it was the fault of the Investigating Agency not to present the cancellation report immediately before the Court concerned, but it has since been filed before the concerned Court.

17. Apart from above, the application of the petitioner under Section 173(8) Cr.P.C. to direct the police to conduct investigation in the GDR or to file the report was rejected way back on 19.03.2019. He could have challenged this order by filing revision before this court or could have filed complaint before jurisdictional Magistrate, which could have been clubbed with the main case under Section 210 Cr.PC, in case

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summoning was ordered. However, Petitioner kept silent for a period of approximately 04 years and faced trial along with co-accused in the main case, i.e. FIR No.56 dated 12.05.2017. He even did not file any revision against the said order. Then, all of a sudden in January, 2023, he filed the present petition under Section 482 Cr.P.C., so as to quash the order dated 13.03.2019, without giving any explanation for the long delay in challenging the order. The inference, which can be safely drawn from all the circumstances taken together is that petition has been moved just as an excuse to get the proceedings stayed, so that Trial Court does not conclude the trial in the main case.

18. For the reasons stated above, this Court finds absolutely no merits in the petition i.e. CRM-M-1045-2023. As such, same is hereby dismissed and consequent thereto, the order dated 10.01.2023, whereby the Trial Court was asked not to pass the final judgment in the main case i.e. FIR No.56 of 2017, stands vacated.

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19. Coming to **CRM-M-50649-2023**, as it is evident from the application moved by the petitioner and the impugned order, it is co-accused Rameshwar Dass, who appears to be using the shoulder of present petitioner – Hemant Kumar @ Madho. The DVR in question is sought to be produced to prove the alibi of co-accused Rameshwar Dass, who has already been declared as proclaimed offender, after his anticipatory bail was earlier dismissed by this Court. In the application, no reason

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whatsoever is disclosed by the petitioner as to for what purpose the DVR was sought to be produced.

20. The contention of the counsel for the petitioner that if the complainant is falsified regarding the presence of co-accused Rameshwar Dass, then entire version of FIR will be deemed to be not proved, has absolutely no merits.

21. As such, this Court finds no merits in the petition. No interference is called for in the impugned order dated 31.08.2023. So, CRM-M-50649-2023 is hereby dismissed.

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22. As noticed earlier that the main case has reached at the stage of defence/arguments and thus, at the fag end for its conclusion. The stay order granted on 10.01.2023 in CRM-M-1045-2023 has been vacated as noted above and therefore, there will no hitch now for the Trial Court to proceed further, so as to conclude the trial.

As such, present petition also stand dismissed.

Thus, all the three petitions titled above, are hereby dismissed.

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

February 20, 2024

Sarita

(DEEPAK GUPTA)
JUDGE

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

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