

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-55745-2023

Subhan Khan and Others

.....Petitioners

Vs.

State of Haryana

.....Respondent

Reserved On: 05.01.2024
Pronounced On: 09.01.2024

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Rajesh Lamba, Advocate
for the petitioners.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

Mr. Anmol Partap Singh Mann, Advocate
for the complainant.

DEEPAK GUPTA, J.

By way of this petition filed under Section 438 Cr.P.C., the three petitioners Subhan Khan, Israk and Abdul Rajak have prayed for granting them anticipatory bail in case FIR No.210 dated 17.06.2018 registered at Police Station Tauru, District Nuh under Sections 148, 149, 307, 323, 506, 341 of the IPC and Section 25 of Arms Act [*Section 302 IPC added later on*], in which they have been summoned by the Court as an additional accused on application under Section 319 Cr.P.C. vide order dated 06.07.2023.

2. Reply by way of an affidavit dated 17.11.2023 of Shri Mukesh Kumar, HPS, Deputy Superintendent of Police, Tauru has been filed on behalf of respondent- State.

3. (i) As per prosecution case, on 16.06.2018, a police party was on

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crime patrolling duty at Village Shikarpur, when it received information from the Police Station Tauru that Shabbir son of Mahmud resident of Village Rahadi and others had been admitted in SHKM Nalhar, on account of assault injuries. Police reached the hospital but the injured having received pellets and bullet injuries, requested to get their statements recorded next day. Medico legal reports of at least 15 injured persons were collected, who had received varying number of firearm injuries.

(ii) On next date i.e. 17.06.2018, Chakriya son of Bhobal made statement to the police, as per which on the previous date i.e. 16.06.2018 at about 11:00 a.m. his family members were returning to their home after offering prayers at Eidgah in Village Rahadi, when accused Suban Khan (petitioner No.1), Abdul Rajak (petitioner No.3), Shamshuddin, Shahrukh, Aarif, Tarif, Majjar, Sajid, Nargis, Akhtari, Usmani and 10-12 other people all residents of Village Rahadi waylaid Anees son of Shabbir aged 16 years and started beating him. Chakriya disclosed further that as his family members came to know about the said incident, they reached the spot. The accused having guns in their hands, gave gunshot injuries to Satbir, Samina, Nafees, Shahjad, Ajmat, Mohsim, Mubin etc.

(iii) Initially, FIR No.210 dated 17.06.2018 was registered under Sections 148, 149, 307, 323, 341, 506 of the IPC and Section 25 of Arms Act. As Imran and Sehnawaj died during the course of investigation, Section 302 of the IPC was added. Though some of the assailants/accused were arrested during the course of investigation, but Shamshuddin, his wife Usmani, Subhan Khan (petitioner No.1), Israaq (petitioner No.2), Abdul Rajak (petitioner No.3), Akhtari and Nargis were found to be innocent.

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(iv) After presentation of the challan under Section 173 Cr.P.C. and the commitment proceedings, the trial commenced against the challaned accused. After recording statement of PW-1 Ajmal and that of PW-2 Nishar (Copies Annexure P-2 & Annexure P-3), application under Section 319 Cr.P.C. was moved by the complainant, which was duly forwarded by the Public Prosecutor, so as to summon Samsu @ Shamshuddin, the three petitioners and some others to face trial along with already challaned accused. Learned Trial Court vide order dated 06.07.2023 partly allowed the application by observing that there was more than *prima facie* case against Samsu @ Shamshuddin, besides petitioners Suban Khan, Abdul Rajak and Israq and so, they were directed to be summoned to face trial along with already challaned accused.

4. It is contended by learned counsel that all the three petitioners were found innocent during investigation conducted by DSP Tauru; that though petitioner Nos.1 & 3 are nominated as accused in the FIR but petitioner No.2 (Israq) is not even named in the FIR. Learned counsel further drawn attention towards the statement of PW-1 and PW-2, to have not attributed any injury to petitioner Nos.2 & 3. Learned counsel further contends that petitioners never ran away and were found innocent and so, in all these circumstances they be allowed anticipatory bail as they are ready to face trial.

5.1 Strongly opposing the petition, learned State counsel ably supported by learned counsel for the complainant drawn attention towards the fact that similarly placed co-accused Samsu @ Shamshuddin had challenged the order dated 06.07.2023, whereby he (Samsu @ Shamshuddin) and the three petitioners were summoned in this case on application under Section 319 Cr.P.C. Said Samsu @ Shamshuddin had also applied for anticipatory bail.

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Both those petitions bearing No.CRR-1652-2023 (O&M); & CRM-M-41899-2023 were dismissed by this Court vide a common order dated 26.09.2023, copy of which has been placed on record.

5.2 It is further contended that participation of all the three petitioners in the crime duly emerged during the statements of injured witnesses, as all the petitioners had fired guns on one or the other member of the complainant party, as is evident from the statement of the witnesses recorded under Section 161 Cr.P.C. but police was colluding with the petitioners due to which they were declared innocent.

5.3 Learned State counsel along with the counsel for the complainant has also drawn attention of this Court towards the observations made by this Court in its order dated 26.09.2023 *qua* similarly placed co-accused Samsu @ Shamshuddin, regarding the collusion of the police with the petitioners.

5.4 Learned counsel for the complainant has also placed on record copies of the various injured witnesses recorded during investigation under Section 161 Cr.P.C. along with their respective Medio Legal reports, revealing the active participation of all the petitioners in the crime and prayed for dismissal of the petition.

6. Replying to the aforesaid contentions, learned counsel for the petitioners concede the fact that as far as petitioner No.1- Subhan Khan is concerned, his role is similar to that of co-accused Samsu @ Shamshuddin and that said Subhan Khan has also been named to be one of the assailants by PW-1 and PW-2 during trial. However, learned counsel contends that PW-1 and PW-2 have not attributed any injuries to petitioner No.2- Israk and petitioner No.3- Abdul Rajak and therefore, on the basis of statements of the witnesses

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recorded under Section 161 Cr.P.C., petitioner No.2 and 3 could not have been summoned under Section 319 Cr.P.C. and so, they deserve to be given the benefit of anticipatory bail.

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

8. The statements of injured witnesses namely Nafees, Sabbir, Nobat and Ajmal recorded under Section 161 Cr.P.C. during investigation would reveal that they have specifically named petitioner No.1- Subhan Khan; apart from other accused, to be the amongst assailants. They also disclosed that Subhan Khan had fired from his gun. Pellet from the gun had hit right side of ear, right side of cheek & right side of neck and lips of PW Nafees. Said statement is corroborated by the Medico Legal report placed on record. As per statement of Sabbir, Subhan Khan had fired shot from his gun and that the pellet hit his right elbow, head, neck, shoulder and abdomen. That statement is further supported by the Medico Legal report. As per statement of injured witness Nobat, Subhan Khan had fired shot from his gun and the pellet hit his right shoulder from the front side besides another pellet on the right calf. The statement also finds support from the Medico Legal report. Similarly, the statement of Ajmal implicates Subhan Khan to have fired shot from his gun and that pellet hit his right palm besides right foot. Thus, as many as four witnesses specifically made statement during investigation that from the shots fired by Subhan Khan from his gun, they had sustained gunshot injuries.

9. Further, the statement of injured Sahid reveals that accused Israk son of Bashir (petitioner No.2) had fired shot from his gun and that the pellet hit his chest. Said statement finds support from the Medico Legal report

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revealing a punctured wound on his chest. The statements of injured witnesses Nasim and Mosim reveal that the shots fired from the gun of petitioner-accused Abdul Rajak had caused injuries to them. The pellet hit the back, left side of neck, left shoulder and left chest of Nasim; whereas the shot fired by said Abdul Rajak hit the pellet on the right hand, left eye & chin of Mosim. Their statements also find support from the Medico Legal reports placed on record.

10. Thus, the role and active participation of all the three petitioners in the crime is quite evident. All three of them caused injuries to one or the other members of the complainant party.

11. The contention of learned counsel for the petitioners to the effect that statements of witnesses other than PW-1 and PW-2 cannot be taken into consideration to decline the benefit of anticipatory bail to petitioner Nos.2 & 3, has no merit, considering the fact that none of the petitioners have challenged the order dated 06.07.2023, whereby they were summoned under Section 319 Cr.P.C., whereas the petition filed by similarly placed co-accused Shamsuddin challenging this order, has already been dismissed by this court.

12. Besides, Section 319 Cr.P.C. reads as under: -

*“(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the **evidence** that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.”*

13. The term “evidence” as used in Section 319 Cr.P.C. is not confined to the fresh evidence, which come on record during trial. Apart from evidence coming on record during trial, the Trial Court is not precluded from taking into

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consideration the ‘evidence’, which has already been collected during investigation, so as to summon a person as an additional accused.

14. On account of entire discussion as above and considering the specific role attributed to the petitioners, all of whom caused gunshot injuries to the members of complainant party, this Court is not inclined to grant the benefit of anticipatory bail to any of the petitioners.

Dismissed.

(DEEPAK GUPTA)
JUDGE

January 09, 2024

Neetika Tuteja

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