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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 04.02.2025

(I) CRR-2435-2022 (O&M)

RINKU @ GOLI

...Petitioner(s)

VERSUS

STATE OF HARYANA AND ANOTHER

...Respondent(s)

(II) CRR-1748-2023 (O&M)

HARDEEP

...Petitioner(s)

VERSUS

STATE OF HARYANA

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Aman Pal, Advocate and
Mr. Rajender Kumar, Advocate
for the petitioner in CRR-2435-2022.

Mr. Manav Bajaj, Advocate for the petitioner in CRR-1748-2023.

Mr. Vishal Kashyap, DAG, Haryana.

Mr. Y. S. Rathore, Advocate and
Ms. Sudha Singh, Advocate for the complainant.

JASGURPREET SINGH PURI, J. (Oral)

CRM-32189-2023 in CRR-1748-2023

Prayer in this application is for condonation of delay of 211 days in
filing the present revision petition.



For the reasons mentioned in the application, the same is allowed and the delay of 211 days in filing the present revision petition, is hereby condoned.

Main cases

1. Both the petitions are taken up together for final disposal with the consent of learned counsels for the parties since the impugned order dated 28.09.2022 in both the petitions is same.
2. These two petitions have been filed by two petitioners, namely, Rinku @ Goli son of Krishan Kumar and Hardeep son of Inderraj, who have been summoned as additional accused under Section 319 Cr.P.C. to face trial under Sections 148, 149, 323, 325, 302, 307, 506 and 120-B of the IPC by the learned Additional Sessions Judge, Karnal by way of passing a common order dated 28.09.2022.
3. The brief facts of the present case are that a FIR was lodged on 02.05.2021 on the basis of a complaint made by one Narender son of Singhu Ram that one Scorpio car came and stopped near him and 7-8 persons alighted from the said car and started beating him and thereafter, they also gave beatings to his brother, namely, Prem Singh and his father and ultimately, all the three injured were admitted in the hospital. After about a month, one of the injured, who was the complainant, namely, Narender succumbed to the injuries. In the FIR which was lodged on the basis of a complaint made by the aforesaid injured, namely, Narender, who ultimately died, he named one Rinku @ Goli and thereafter, again named one Rinku resident of Gharaunda by stating that the aforesaid Rinku @ Goli had caught hold of him and the other Rinku resident of



Gharaunda gave him injuries with bricks and he also named the other petitioner, namely, Hardeep, who also caught hold of him. The motive of giving beatings was that the deceased had strained relations with one Shubham regarding which separate criminal proceedings were pending prior to the present FIR.

4. Both the present petitioners and one other co-accused, who was nominated, namely, Kanwaljeet Bhinder @ Bukkar were declared as innocent by the police during investigation and therefore, challan was not presented against them, whereas challan was presented against 9 other co-accused, who are now facing trial. An application was filed under Section 319 Cr.P.C. for summoning the present two petitioners and also the aforesaid co-accused, namely, Kanwaljeet Bhinder @ Bukkar as additional accused, which was allowed by the learned Additional Sessions Judge, Karnal vide impugned order dated 28.09.2022 and all the aforesaid three persons were summoned by way of warrant of arrest to face the trial for the commission of offences punishable under Sections 148, 149, 323, 325, 302, 307, 506 and 120-B of the IPC.

5. Out of the aforesaid three persons who were summoned as additional accused, only Rinku (petitioner in CRR-2435-2022) and Hardeep (petitioner in CRR-1748-2023) have assailed the aforesaid summoning order, whereas the third person, namely, Kanwaljeet Bhinder @ Bukkar has not assailed the aforesaid summoning order and is facing trial.

6. Mr. Aman Pal, learned counsel for petitioner-Rinku @ Goli submitted that it is a case where the complainant, namely, Narender, who ultimately died had lodged an FIR by taking the name of one Rinku @ Goli by alleging that he caught hold of him and thereafter, also named one more Rinku



stated to be resident of Gharaunda but the name of the father of none of the aforesaid two Rinkus had come in the FIR. He further submitted that petitioner-Rinku is a third person by the name of Rinku and is also resident of Gharaunda and it was a case of a mistaken identity. He further submitted that at the time of investigation, the petitioner was nominated as an accused but when the police investigated the case thoroughly, it came to light that the petitioner was not associated with the present case and he is Rinku son of Krishan, although resident of Gharaunda but he had nothing to do with the present offence, whereas the other two Rinkus, who were nominated were named in the FIR and the petitioner was not the same Rinku and because of the aforesaid mistaken identity, although he was nominated in the FIR as an accused but the police thereafter exonerated him and in this way, challan was not presented against him.

7. While further substantiating his arguments, learned counsel for petitioner-Rinku submitted that in the present case when the Deputy Superintendent of Police, Gharaunda, District Karnal filed a status report by way of an affidavit before this Court, then it was specifically so stated especially in paras No.3 and 4 that the police has not found any involvement of the petitioner in the present offence. He further submitted that in the aforesaid status report, it has been so stated that on investigation it has been found that only one accused namely, Rinku Gharaunda was found involved in the present case and was arrested by the police, who is facing trial. He further submitted that it has also been stated in the aforesaid status report that so far as the present petitioner, namely, Rinku son of Krishan is concerned, during investigation



according to his mobile tower location obtained from the Cyber Cell, he was found at a distance of 15 kms. away from the place of occurrence and regarding the same even zimni No.7 was effected regarding his innocence. He also submitted that in the aforesaid status report filed before this Court, a stand has been taken by the police that the petitioner was totally innocent and he was not the same Rinku who has been named in the FIR.

8. Learned counsel for petitioner-Rinku @ Goli further submitted that whenever the learned trial Court is to consider any application for summoning of any accused under Section 319 Cr.P.C. as an additional accused then the learned trial Court has to proceed with abundant caution based upon cogent and strong reason. He referred to a judgment passed by a Constitution Bench of Hon'ble Supreme Court in **Hardeep Singh versus State of Punjab and others, 2014 (3) SCC 92** to contend that it is a settled law that a person can be summoned as an additional accused only when there are strong and cogent reasons and the Court arrives at the conclusion that 'more than *prima facie*' case is made out because the standard of proof is on a higher and stronger footing as compared to that at the time of framing of charges. He further submitted that when it was a case of mistaken identity, then the learned trial Court/learned Additional Sessions Judge, Karnal ought to have considered all the aspects pertaining to the mistaken identity and ought to have thereafter ascertained as to whether the petitioner-Rinku was to be summoned or not but the order passed by the learned Additional Sessions Judge, Karnal is without appreciating the aforesaid aspect. He further referred to the statement of PW-1 Prem Singh (Annexure P-7), which was recorded at the time of trial on the basis



of which the application under Section 319 Cr.P.C. was filed, wherein he had also named Rinku but still it was so mentioned as Rinku resident of Gharaunda and the father's name of Rinku was not mentioned and one Rinku, who is resident of Gharaunda is also facing trial and so far as the present petitioner is concerned, he was not even involved in the present case even as per the police and therefore, the impugned order passed by the learned Additional Sessions Judge, Karnal was not only erroneous but also not in consonance with the law laid down by a Constitution Bench of Hon'ble Supreme Court in **Hardeep Singh's case (Supra).**

9. Mr. Manav Bajaj, learned counsel for petitioner-Hardeep submitted that so far as petitioner-Hardeep is concerned, although his name figured in the FIR but when the learned trial Court was to consider the role of petitioner-Hardeep, who was exonerated by the police then more than *prima facie* satisfaction was to be recorded by the learned trial Court because he was also exonerated by the police. He further submitted that if there was any additional material available apart from the deposition of injured, namely, Prem Singh as PW-1, the material had to be considered by the learned Additional Sessions Judge, Karnal and only on the basis of consideration of additional material that a recording of more than *prima facie* satisfaction was to be made and in the absence of the same qua petitioner-Hardeep also, there is also non-appreciation of facts and law by the learned Additional Sessions Judge, Karnal because the summoning order prejudicially affected the rights of the petitioner-Hardeep also and therefore, the aforesaid impugned order is liable to be set aside qua him.



10. On the other hand, Mr. Vishal Kashyap, DAG, Haryana while referring to the aforesaid status report by way of affidavit filed by the Deputy Superintendent of Police, Gharaunda, District Karnal submitted that as per the aforesaid status report, it is the stand of the police that on investigation petitioner-Rinku son of Krishan was found to be innocent because he was not the same Rinku as that who was named in the FIR. He further submitted that so far as petitioner-Hardeep is concerned, he was also found to be innocent by the police.

11. For the sake of clarification, learned State counsel submitted that two Rinkus have been challaned in the present case and they are facing trial. First is Rinku son of Shishram resident of Kohand and second is Rinku @ Tinku @ Goli son of Rajender resident of Ranwar. He further submitted that so far as the investigation of the police is concerned, the present petitioner-Rinku son of Krishan resident of Gharaunda was found innocent and he was not involved in the present offence.

12. Mr. Y. S. Rathore, learned counsel for the complainant submitted that there is no illegality or perversity in the impugned order passed by the learned Additional Sessions Judge, Karnal while deciding the application under Section 319 Cr.P.C. since the order is a detailed order in which various judgments of Hon'ble Supreme Court have been referred and the petitioner-Rinku was the same person who had inflicted injuries and the mere fact that his father's name was not stated in the FIR or in the deposition of PW-1 would not mean that he is not the same Rinku and it is only at the time of trial that it can be ascertained as to whether he is Rinku or not and the same was the position



with regard to other petitioner-Hardeep because once his name has figured in the FIR and also in the deposition of PW-1 then the learned Additional Sessions Judge, Karnal has rightly summoned him.

13. Learned counsel for the complainant also submitted that a similar affidavit of Deputy Superintendent of Police, Karnal was also filed in the anticipatory bail petition bearing *CRM-M-60325-2022* filed by petitioner-Rinku but thereafter, it was directed by this Court in the aforesaid anticipatory bail petition that let an affidavit be filed by the Superintendent of Police, Karnal and when the Superintendent of Police, Karnal filed the affidavit then he rather stated in the affidavit that the petitioner-Rinku was also in contact with the other co-accused and also that material available on the file indicates suspicious role of the petitioner-Rinku, although the concession of anticipatory bail was granted to the petitioner in the aforesaid case and therefore, the present petition is liable to be dismissed.

14. I have heard the learned counsels for the parties.

15. The present FIR was lodged on 02.05.2021 on the basis of statement of one Narender son of Singhu Ram by alleging that one Scorpio car came and stopped near him and 7-8 persons alighted from the said car and started beating him and thereafter, they also gave beatings to his brother, namely, Prem Singh and his father. Thereafter, the complainant, namely, Narender succumbed to the injuries. In the FIR, he had named Rinku @ Goli and again named Rinku resident of Gharaunda and one of the petitioners, namely, Hardeep. During the course of investigation, it was found that there were three relevant persons with the name of Rinku regarding which



investigation was conducted. One Rinku son of Shishram resident of Kohand, although was not named in the FIR but during investigation his name was nominated in the present case on the basis of disclosure statement of the other co-accused and he is facing trial. Second Rinku @ Tinku @ Goli son of Rajender resident of Ranwar was also found to be involved in the present case. There were in fact two Rinkus, who were named in the FIR but their identification was not clear. During the course of investigation, police found that so far as the present petitioner-Rinku son of Krishan is concerned, he was not involved in the present case as on the basis of his mobile tower location, he was 15 kms. away from the place of occurrence and he was not the same Rinku as stated by the complainant/deceased, namely, Narender in the FIR and thereafter again, at the time when the injured, namely, Prem Singh stepped into the witness-box as PW-1, he also named Rinku but the identity was not clear. This aspect according to the learned State counsel and the status report filed by the Deputy Superintendent of Police, Gharaunda, District Karnal was cleared and it was found that petitioner-Rinku son of Krishan was not involved in the present case. So far as the second petitioner-Hardeep is concerned, although he was named in the FIR but as to on what basis he has been summoned under Section 319 Cr.P.C. by the learned Additional Sessions Judge, Karnal and on what additional material did the learned Additional Sessions Judge, Karnal rely on so as to arrive at a conclusion has not been stated in the impugned order while deciding the application filed under Section 319 Cr.P.C.

16. A perusal of the aforesaid impugned order would show that the learned Additional Sessions Judge, Karnal has considered the application under



Section 319 Cr.P.C. based upon the FIR and also the statement made by one of the injured, namely, Prem Singh as PW-1, wherein it was again stated at the time of deposition that Rinku was involved in the present case.

17. However, the learned Additional Sessions Judge, Karnal has not considered the aspect of mistaken identity of the aforesaid Rinku son of Krishan, who is the present petitioner. The Deputy Superintendent of Police, Gharaunda, District Karnal, who has filed the aforesaid status report has so stated that Rinku son of Krishan is not involved in the present case and as per the learned State counsel, there were two other Rinkus, who were involved in the present case and are facing trial. However, at the same time, the learned counsel for the complainant has brought to the notice of this Court that at the time when the present petitioner-Rinku had filed anticipatory bail petition after the affidavit was filed by the Deputy Superintendent of Police, Gharaunda, District Karnal, who has also filed the affidavit in the present case, a subsequent affidavit was filed by the Superintendent of Police, Karnal, in which he stated that it is suspicious as to whether the petitioner-Rinku was involved or not. This Court is of the considered view that all these issues with regard to identity or mistaken identity ought to have been gone into on the basis of material available on the record and the learned Additional Sessions Judge, Karnal ought to have considered all these issues at the time of ascertaining and considering the application filed under Section 319 Cr.P.C. for summoning the petitioners as additional accused.

18. The law in this regard is well settled. A Constitution Bench of Hon'ble Supreme Court in Hardeep Singh's case (Supra) held as under:-



“105. Power under Section 319 Cr.P.C is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the Court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C the purpose of providing of “it appears from the evidence that any person not being the accused has committed any offence” is clear from the words “for which such person could be tried together with the accused”. The words used are not “for which such person could be convicted”. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C to form any opinion as to the guilt of the accused”.

19. Therefore, the learned Additional Sessions Judge, Karnal while summoning the petitioners as additional accused ought to have come to a more than *prima facie* satisfaction based upon cogent and strong reasons after



considering the identity aspect particularly in view of the fact that there were three Rinkus in the present case, out of which the present petitioner is one Rinku and remaining two Rinkus are facing trial. Without ascertaining the identity of the present petitioner-Rinku and the investigation of the police, such an order under Section 319 Cr.P.C. for summoning as additional accused could not have been passed. So far as the second petitioner-Hardeep is concerned, again there is no deliberation or discussion with regard to as to on what material the aforesaid petitioner-Hardeep has been summoned as an additional accused despite the fact that he was exonerated by the police as well.

20. Therefore, this Court is of the considered view that the impugned order dated 28.09.2022 passed by the learned Additional Sessions Judge, Karnal suffers from illegality and perversity and is in derogation of the law laid down by a Constitution Bench of Hon'ble Supreme Court in **Hardeep Singh's case** (**Supra**).

21. Consequently, both the petitions are allowed. The impugned order dated 28.09.2022 passed by the learned Additional Sessions Judge, Karnal in both the petitions is set aside qua the present two petitioners only, namely, Rinku @ Goli son of Krishan Kumar and Hardeep son of Inderraj.

22. This Court is of the further considered view that it is a fit case to remand the case to the learned Additional Sessions Judge, Karnal/trial Court to pass a fresh order on the application under Section 319 Cr.P.C. It is therefore directed that the learned Additional Sessions Judge, Karnal/trial Court shall now pass a fresh order after due application of mind and strictly in consonance with the law laid down by a Constitution Bench of Hon'ble Supreme Court in



Hardeep Singh’s case (Supra). It is made clear that the order which is to be passed shall be a fresh order based upon fresh application of mind and uninfluenced by the present order which has been passed by this Court and also the impugned order dated 28.09.2022, which has now been set aside.

04.02.2025
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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