



IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 292 (2 cases)

1.

Criminal Revision No.1250 of 2023 (O & M)

Date of Decision: January 13, 2026

Aman Nehra

..... PETITIONER(S)

VERSUS

State of Haryana & another

..... RESPONDENT(S)

2.

Criminal Revision No.933 of 2023 (O & M)

Date of Decision: January 13, 2026

Ashish @ Ashish Nehra

..... PETITIONER(S)

VERSUS

State of Haryana & another

..... RESPONDENT(S)

CORAM: HON'BLE MR. JUSTICE SUBHAS MEHLA

PRESENT: - Mr. Keshav Pratap Singh, Advocate, for the petitioner(s).

Mr. T.P. Singh, Senior Deputy Advocate General,
Haryana.

Mr. Kunal Dawar, Senior Advocate, with Mr. Rohit
Rana, Advocate, for respondent No.2-complainant.

SUBHAS MEHLA, J

CRM No.48564-2025 In CRR No.1250-2023

CRM No.48548-2025 In CRR No.933-2023

Prayer made in the applications is for vacation of stay order dated 04.05.2023, whereby the trial Court was directed to refrain from passing final judgment.

With the consent of learned counsel for the parties, the main petitions are taken up on Board for final disposal.

Applications stand disposed of accordingly.

Main Petitions

This judgment shall dispose of aforementioned two revision petitions as they involve same facts and questions of law.

2. The present petitions have been preferred challenging orders dated 21.11.2022 passed by the Additional Sessions Judge, Faridabad, whereby the revisionists/petitioners have been summoned as additional accused to face trial under Sections 148, 149, 302, 506, 120-B IPC and under Section 25 of Arms Act.

3. Learned counsel for the petitioners has contended that after a thorough investigation and after perusal of CCTV footage, the tower location of the mobiles of the petitioners and versions of the respectable members of the locality of the petitioners, the petitioners were not found involved in the present case, so they were not challaned. However, the trial Court, without appreciating the material available, allowed the application of the complainant made under section 319 Cr.P.C. and summoned the petitioners to face trial. The Police has specifically mentioned in its report that petitioners were not found involved in the alleged occurrence . He has also argued that petitioner-Ashish was although arrested by the Police but later on, he was released by moving an application before Ld. JMIC, Faridabad, to discharge him after three months. Thus, learned counsel has prayed for acceptance of the petitions and thereby setting aside of the impugned orders.

4. Learned State counsel has opposed the contentions raised by learned counsel for the petitioners but fairly admitted that there is no CCTV footage of the occurrence of the prosecution material.



5. Learned counsel for respondent No.2-complainant has contended that the present case is based on the version of eye witness as the complainant is an eye-witness of the occurrence and he has specifically named the petitioners while appearing in the witness box as PW-1. Learned counsel has contended that since petitioners' names figure in the FIR, but the investigating agencies just on surmises and conjecture and on the basis of non reliable material, has not forwarded them to face trial. Learned counsel relied upon the judgments of co-ordinate Bench in **Kamlesh v. State of Haryana and others, 2020(4) RCR (Criminal) 692; Gurjinder Singh and another v. State of Punjab and another, 2022(4) RCR (Criminal) 206; Sameer @ Sameer Dahiya v. State of Haryana and others, CRR-1754-2022, Decided on 25.08.2022; Harpreet Singh alais Happy and Another v. State of Haryana, 2018(4) R.C.R. (Criminal) 345;** to support his contentions.

6. Heard.

7. Factual matrix of the case at hand is that the complainant/respondent no. 2 filed a complaint to police, on the basis of which an FIR no. 3 dated 02.01.2022 under section 148,149,302,506,120-B was registered, by stating that on 01.01.2022 at about 06:10 pm , he got information that his son namely Rahul has been surrounded by 8/10 boys, who were abusing him and quarreling with him. Thereafter, he along with his nephews reached the spot and saw that Hari Om, Sagar @ Ranvir, Aman, Ashsish, all having knives in their hands have assaulted his son. He further stated in his complaint that names of the 3-4 boys are not known to him but he can identify them. Those unknown persons were having lathi (sticks),



dandas(sticks) and knives in their possession whereby they had inflicted injuries upon his son. On raising quarrel by them (complainant and his nephews), perpetrators fled away from the spot and threatened to kill while they were fleeing. Injured was got admitted to the Sunshine Hospital, Uncha Gaon for treatment by the respondent no. 2, wherein injured died during his treatment. He alleged in his complainant given to the police that his son has been murdered by Bhrampal and his son Hari Om, on account of revenge of the quarrel which was taken place, two years before, with them.

After thorough investigation the challan was presented but the Ashish was discharged and Aman was exonerated from the allegations levelled in the FIR and thus their names were kept in the column no. 2. Aggrieved with this, complainant filed an application under section 319 Cr.P.C. before the trial court for summoning petitioners as an additional accused to try them alongwith the other accused in case titled as “State of Haryana vs. Pratap and others CIS No. SC/366/2022”. The trial court vide impugned order dated 21.11.2022 summoned the petitioners to face trial with other accused, assailing which the present revision petition before this court has been filed.

8. The power of the trial court to summon any person as an additional accused is undisputed, but the same has to be exercised sparingly, with caution, and to be exercised in order to ensure that the culprit does not get away. In ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92*** the Constitution bench of the Supreme Court held:

"105. Power under Section 319 CrPC 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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.PC. In Section 319 Cr.PC the purpose of providing if "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 CrPC to form any opinion as to the guilt of the accused."

9. Hon'ble Apex Court in **Omi @ Omkar Rathore & Anr. v.**

The State of Madhya Pradesh & Anr. (2025 AIR Supreme Court 721)

observed that while exercising powers under section 319 crpc for summoning a person as additional accused, the court can rely only on the basis of evidence adduced before it and not on the basis of materials available in the chargesheet or the case diary, because such materials contained in the charge sheet or the case diary do not constitute evidence.

10. The Apex Court in the case of **Shiv Baran v. State of U.P.,**

2025 SCC OnLine SC 1457 also held that trial court can exercise power to

summon an additional accused under Section 319 Cr.P.C. only on the basis

of the evidence adduced before it and not any other material collected during

investigation.



11. From the record available, it is the case of the petitioners that after investigating the CCTV footage and tower location of mobile, they were not found involved in the alleged occurrence and were given clean chit by the Police. As per the version of complainant, who is the eye-witness of the occurrence, has specifically stated that petitioners caused stab injuries with knife to his son Rahul. It is not the case of the prosecution that CCTV footage of occurrence is available. The plea of learned counsel for the petitioners that petitioners were not present at the place of occurrence for which he has relied upon CCTV footage of his house or neighborhood house or tower location of mobile, is not sustainable. Be that as it may, the material showing tower location of mobile phone of the petitioner cannot dislodge the case of direct evidence of prosecution as cell phone tower locations are not conclusive proof of anybody's presence or absence on a particular spot. The contention of the Ld. Counsel for the petitioners that they were not present on the spot at the time of occurrence pertains to the plea of Alibi which is a matter of trial to be adjudicated at an appropriate stage and cannot be supported by the CCTV footage on which the petitioners are relying upon inasmuch as such CCTV footage is not of the alleged occurrence. Investigation agency itself appreciated the evidence of complainant and accused qua their plea of alibi and hold a mini trial in such a heinous crime, which is beyond the powers invested in it by law.

Learned counsel on behalf of the respondent has relied upon the above named cases adjudicated by coordinate benches of this court, wherein, while dealing with the revision petitions filed against orders passed by trial courts allowing/ dismissing application under section 319 Cr.P.C, it



has been rightly observed that cell tower locations are not conclusive proof of anybody’s presence or absence on a particular spot. The documents showing tower location of mobile phone of the petitioner cannot dislodge the case of eye-witness of the prosecution. It may advance the plea of alibi raised by the petitioners which is a subject matter of trial.

11. In view of the above discussion, this court does not find any infirmity or illegality in the impugned order passed by the trial court, thus present petitions are hereby dismissed.

Pending applications, if any, also stand disposed of.

Photocopy of this order be placed on the connected file.

(Subhas Mehla)
Judge

January 13, 2026
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No