
(2017) 04 RAJ CK 0131
In the Rajasthan High Court
Case No : 3245 of 2017

Lakharam S/o Vagta Ram

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 27-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 438](#), [Section 439](#), [Section 161](#)/
[Section 149](#) - Direction for grant of bail to person
apprehending arrest - Spe

Citation : (2017) 04 RAJ CK 0131

Hon'ble Judges : Sandeep Mehta

Bench : SINGLE BENCH

Advocate : Vineet Jain, Dhirendra Singh, S.P.Sharma, K @APPELLANT @hash
Vyas, Prabhu Dayal Dhariya, M.K. Garg, Anil Joshi

Judgement

1. Heard learned counsel for the petitioner and learned Public Prosecutor. Perused the order under challenge and the documents placed on record.
2. Anticipatory bail applications no.2743/2017 and 3173/2017 have been laid on behalf of the accused petitioners Hari Singh and Pappu Singh, Bharat Kumar and Raan Singh respectively under Section 438 Cr.P.C. whilst regular bail application no.3245/2017 has been laid on behalf of the accused petitioner Lakharam under Section 439 Cr.P.C. in connection with F.I.R. No.230/2016, registered at Police Station Ahore, District Jalore for the offences under Sections 147, 148, 149, 365 and 302 IPC and Section 3 / 25

of the Arms Act.

3. Succinctly stated facts relevant and essential for disposal of these bail applications are noted herein below:-

4. Complainant Hari Singh s/o Sultan Singh resident of Village Bhooti lodged a written report at P.S. Ahore on 17.10.2016 at 8:40 AM alleging inter alia that on the previous evening i.e. 16.10.2016, some guests had come to his house. At about 8 O'clock, he received an information from the outskirts of the village that some persons had come in three vehicles and were searching for the first informant and Loon Singh. A little later, Raju Singh s/o Shrawan Singh called on the mobile phones of Loon Singh and the complainant and threatened them. The complainant apprehended that some untoward incident may happen at his house, therefore, he collected his guests and went to the Bhooti Liquor Shop. A little later, Raju Singh, Lakharam and Bhagwat Singh and 8-10 unknown persons came there in Gateway, Scorpio and Swift Desire vehicles. The first informant's brother Shri Manohar Singh was also going from Village Bhooti to Kanwla on a tractor. On noticing the commotion, he stopped his tractor at the liquor shop. Raju Singh, Lakharam, Bhagwat Singh and 8-10 unknown persons got down from these three vehicles. Raju Singh, Lakharam and Bhagwat Singh were having pistols whereas other accused were armed with iron rods etc. All three named accused who were armed with pistols started firing in the air. Lakharam fired towards the complainant but he managed to save himself. The three assailants directed their attention towards his brother Manohar Singh and started shooting at him as a result whereof, he got injured and fell down unconscious on the tractor's seat. Thereafter, the first informant, Mahipal Singh, Sikpal Singh and Loon Singh took Manohar Singh to Mahaveer Hospital, Sumerpur in an

unconscious condition where the doctors declared him dead. While the first informant was taking the injured to the hospital, the assailants abducted Hukam Singh and took him away in their vehicles. On the basis of this report, FIR No.230/2016 was registered at P.S. Ahore for offences under Sections 147, 148, 149, 365 and 302 IPC and Section 3 / 25 of the Arms Act and investigation commenced. The dead body of Mahipal Singh was subjected to post mortem and it was found that he was having a solitary gun fire injury on his right hypochondrium area extending to the peritoneal cavity. The bullet lodged in the renal area was allegedly recovered and has been reportedly sent to the FSL for examination. The cause of death was opined to fire arm injury on the abdominal area of the deceased.

5. It is pertinent to note here that the accused petitioners Hari Singh, Pappu Singh, Bharat Kumar and Raan Singh (who crave pre-arrest bail) were not named in the FIR despite the fact that the complainant and his companions admittedly knew them from before.

6. Complainant Hari Singh, in his first statement recorded under Section 161 Cr.P.C. on 17.10.2016 repeated the story set out in the FIR and further alleged that Loon Singh was operating a petrol pump in partnership. Raju Singh used to take fuel from the said petrol pump on credit. The due amount reached to Rs.5 lakhs which Raju Singh did not want to pay and thus, he was bearing a grudge against Loon Singh and the assault had been launched to wreak vengeance. He clearly stated that he could not identify the unnamed 8-10 assailants because of darkness. The subsequent statement of Hari Singh was recorded on 14.12.2016 by the Additional S.P., Jalore. In such statement, the complainant gave out an entirely new version of the incident and alleged that one

Paras had left a sum of Rs.50,000/- with Bheru Singh, salesman of Bhooti Liquor Vend for being paid to the complainant. A little later, Loon Singh and Hukam Singh called him, upon which the first informant asked them to come to Bhooti liquor shop. He reached the shop at about 7 O" clock in the evening. Hukam Singh, Loon Singh, Ganpat Singh, Karan Singh and a young boy Raju Singh arrived at the Bhooti liquor shop in a Bolero Camper vehicle whereupon he purchased a liquor bottle and went back to his house at Kanwla. He received an information at 8:30 PM that Raju Singh and others were roaming around in three vehicles and were searching for him and Loon Singh. On this, the complainant called Lakharam and enquired about his whereabouts. Lakharam replied that he was not accompanying Raju Singh and was at Takhatgarh. Thereafter, Raju Singh called the complainant and enquired about his own location as well as that of Loon Singh and Hukam Singh. Upon this, the first informant accompanied with Loon Singh, Hukam Singh, Ganpat Singh, Karan Singh, Raju and Sikpal Singh again went to the Bhooti liquor shop at about 9:00 PM. They called out Bheru Singh salesman and told him to call Seth Vikram Singh so that the controversy with Raju Singh could be settled. In the meantime, Manohar Singh came around on tractor from Kanwla. They parked their vehicles in such a way that only one vehicle could be taken out from between them. An unnumbered Gateway vehicle came there and the driver parked it between the Bolero Camper and the Tractor of the complainant party. A Scorpio vehicle bearing no.RJ 24 GA 3330 also came there and the driver of the said vehicle parked it by the side. Raju Singh armed with a firearm and 3-4 other persons armed with blunt weapons got down from the Gateway vehicle. Raju Singh fired aerial gunshots. 6-7 persons having iron pipes, lathies and baseball bats in their

hands got down from the Scorpio vehicle. Raju Singh fired at Manohar Singh due to which he fell down. Thereafter, Raju Singh launched assault on the remaining members of the complainant party. Upon this, Sikpal Singh gave a sword blow to Raju Singh after which Raju Singh was taken away in the Scorpio vehicle. Manohar Singh was boarded on the Bolero Camper vehicle in an injured condition and was taken to Mahaveer Hospital, Sumerpur where the doctors declared him dead. The first informant further alleged that the fact regarding abduction of Hukam Singh was inadvertently recorded in the FIR. He further mentioned that while drafting the FIR, owing to urgency of the situation, he named only Raju Singh, Bhagwat Singh and Lakharam as the assailants whereas apart from these three persons, Parasmal Kalal, Bharat Kumar Suthar, Bharat Singh Rajput, Narayan Puri Swami, Bhanwar Singh Rajput, Hari Singh Rajput, Raan Singh Rajput, Raju Singh Rajput, Pappu Singh Rajput and Bharat Kumar Devasi were also amongst the assailants who came to the liquor shop and assaulted & killed his brother Manohar Singh and caused injuries to Ganpat Singh, Karan Singh and Raju Singh. It is pertinent to note here that in this subsequent statement of Hari Singh recorded by the Additional S.P., there is no allegation that any of the petitioners were armed with fire arms or that they fired gun shots towards the complainant party.

7. The statement of Bheru Singh salesman of liquor shop an independent eye witness of the incident was recorded on 20.10.2016. He stated that Hari Singh honked his horn outside the liquor shop at about 9 0" clock on which, he and Kalu Singh salesman came out. Hari Singh was at that time shouting loudly into his mobile phone and was challenging Raju Singh to come to the Bhooti liquor shop if he had courage to do so. At that time,

Loon Singh, Hukam Singh, Ganpat Singh and Sikpal Singh and two unknown persons were accompanying him. The witness enquired from Hari Singh as to the reason of the commotion on which, Hari Singh told him to go inside the shop and stay out of trouble. A little later, a Maruti 800 car came from towards Kanwla which was being driven by Mahipal Singh. Manohar Singh also came there on a tractor. All the three vehicles were parked in such a manner that only one vehicle could pass between them. Hari Singh and his companions were armed with some weapon or the other. 5-7 minutes later, a Gateway vehicle came from towards Village Bhooti. 4-5 persons got down from Gateway vehicle of which one was Raju Singh s/o Shravan Singh. The witness feared that some untoward incident could happen on which he went inside the shop and closed the door. He heard the gun shots being fired and abuses being hurled from inside the shop. After the cries died down, he and Kalu Singh came out and saw Manohar Singh lying down in a pool of blood. He was thereafter taken away by Hari Singh and his companions. Hukam Singh who was in an inebriated condition, went and sat behind their shop. At about 11 P.M., Lakharam called him and asked him about the incident that had occurred at his shop. He also told the witness that Raju Singh had been injured in the incident. The subsequent statement of the witness was recorded on 17.12.2016 in which, in addition to the story set out in the earlier statement, the witness alleged that he saw Raju Singh firing in air. Similar version of the incident was given by Kalu Singh.

8. Loon Singh, in his statement recorded as late as on 9.1.2017, repeated the story as stated by Hari Singh. The witness further stated that he was having some monetary dispute with Raju Singh.

9. A cross FIR was also registered at the instance of the accused party wherein it is alleged that members of the complainant party assaulted Raju Singh and caused him a significant sharp weapon injury on his hand.

10. Bail applications preferred on behalf of Narain Puri, Bharat Kumar, Bharat Singh and Parasmal have been allowed by this Court and they have been enlarged on regular bail.

11. The accused Lakharam has been arrested whereas, the accused Pappu Singh, Bharat Kuimar, Raan Singh and Hari Singh are sought to be arrested in the case at hand. Hence, these applications for regular as well as pre-arrest bail have been preferred on their behalf before this Court.

12. Learned counsel Shri Vineet Jain representing the petitioner Lakharam, learned counsel Shri Dharendra Singh representing petitioners Pappu Singh, Bharat Kumar & Raan Singh and learned counsel Shri S.P. Sharma representing petitioner Hari Singh vehemently urged that the entire prosecution story is false and fabricated. From the material collected by the investigating agency, it is apparent that Hari Singh, the first informant was the aggressor and he deliberately designed the entire incident which happened at the Bhooti liquor shop. For this purpose, he hatched a conspiracy and came down to the liquor shop with numerous companions all heavily armed. He called Raju Singh and challenged him to come down to the liquor shop after making a prior plan of attacking him. Vehicles of the complainant party were parked in such a manner that the vehicle of the accused party could be boxed in and they could be trapped and prevented from escaping. Raju Singh fell into the trap and came to the liquor shop with some unknown persons. No sooner Raju Singh got down from his vehicle, he was assaulted and a serious sword injury was

inflicted on his hand. In defence, Raju Singh fired a gun shot killing Manohar Singh from the complainant side. The story as put forth in the FIR and in the statements of the prosecution witnesses that the accused launched an indiscriminate assault on the members of the complainant party by various weapons is falsified from the fact that no one apart from Manohar Singh, received any injury in the incident. They urged that it is impossible to believe that all other members of the complainant party could escape unscathed without even receiving a scratch had the incident taken place in the manner alleged by them. It was further urged that the complainant party was knowing all the accused from before and in this background, there was no occasion for omission of names of the petitioners Hari Singh, Pappu Singh, Bharat Kumar & Raan Singh in the detailed written report and the initial statement of Hari Singh recorded under Section 161 Cr.P.C. It was further contended that the genesis of the occurrence was deliberately concealed by Hari Singh and thus, no credence can be given to the description of the incident as set out in the FIR and both his statements recorded during investigation. It was further submitted that the witness Bheru Singh salesman of the liquor shop, has given the correct version of the story as it unfurled. The witness clearly stated that the first informant Hari Singh called Raju Singh on mobile and challenged him to come to the liquor shop so that the scores could be settled. When Raju Singh came to the shop, he was indiscriminately assaulted by the members of the complainant party who were having dangerous weapons like swords etc. in their hands. At that point of time, Raju Singh fired a gun shot in his own defence. Even if presence of the remaining accused persons is assumed at the scene of occurrence, then also evidently, they did not play any active part in the entire incident.

They thus urged that the respective petitioners deserve to be released on regular as well as pre-arrest bail.

13. Per contra, Shri K.V.S. Vyas learned Public Prosecutor appearing for the State and Sarva Shri M.K. Garg & Anil Joshi learned counsel representing the complainant vehemently opposed the submissions advanced by the petitioners' counsel. They contended that the accused party came to the village Bhooti in three vehicles armed to the teeth and were searching for the first informant and Loon Singh in order to kill them so that the scores could be settled. They were armed with dangerous weapons like fire arms etc. with the sole objective of killing Hari Singh and Loon Singh. No sooner opportunity presented itself, the accused Raju Singh, Lakharam and Bhagwat Singh and their companions launched an indiscriminate attack on members of the complainant party by fire arms and other weapons. Manohar Singh was killed by the gunshot fired by Raju Singh. Remaining members of the complainant party could somehow escape unhurt. They thus urged that the case of Lakharam who craves regular bail is distinguishable from that of the co-accused who have been enlarged on bail by this Court because those co-accused were not named in the FIR. They further prayed for rejection of the pre-arrest bail applications filed on behalf of the respective petitioners urging that exercise of the discretion under Section 438 Cr.P.C. is unwarranted looking to the grave allegations made against the accused.

14. I have heard and considered the arguments advanced at the Bar and have gone through the material available on record.

15. It is admitted that the complainant Hari Singh knew all the accused persons from before. The FIR was lodged on 17.10.2016 i.e. on the day next to the occurrence and, therefore, there was

no reason as to why names of the known accused persons could not have been mentioned therein. Failure to mention names of the petitioners Hari Singh, Pappu Singh, Bharat Kumar and Raan Singh in the FIR is far too significant a circumstance to be ignored in view of the peculiar facts of the case. The entire case as set out by the first informant Hari Singh in the FIR was significantly altered during the subsequent investigation made by an officer in the rank of Addl. S.P. In view of the description of the incident as given out by the independent witness Bheru Singh, evidently, it was Hari Singh the first informant who made a call and challenged Raju Singh to come the liquor shop with an anticipation of having a duel with him. The complainant party was prepared for trouble and was heavily armed. They parked their vehicles around the liquor shop in a manner so that the vehicles of the accused persons could be boxed in and their escape route cut off. No sooner Raju Singh alighted from his vehicle, he was assaulted by a sword and a grave sharp injury was caused on his fore arm. Thus apparently, Hari Singh concealed genesis of the occurrence in the FIR and gave out a concocted version of the story. Admittedly, as per the medical report available on record, only a solitary fire arm injury was caused to Manohar Singh in the incident which is specifically attributed to Raju Singh. Had there been an iota of truth in the prosecution story that the remaining accused persons nearly ten in number were armed with dangerous weapons like fire arms, lathies, iron rods etc. and launched an indiscriminate assault on the complainant party then definitely some of them would have received injuries. In these circumstances, applicability of Section 149 IPC in the case at hand is debatable and over implication cannot be ruled out. Whilst in the initial prosecution story as set out in the FIR and the first statement of Hari Singh,

all three accused persons named in the FIR were stated to be armed with fire arms, on the contrary, in the subsequent statement of Hari Singh recorded by the Addl. S.P., the said allegation was given up and only Raju Singh was alleged to be armed with a fire arm at the time of incident. It is also mentioned in the statement of Bheru Singh that Lakharam called him at about 11 0" clock in the night and enquired as to whether any untoward incident had happened at the liquor shop. Had Lakharam been present at the scene of occurrence, there was no occasion for him to make such an enquiry.

16. Be that as it may. In view of the facts noticed above and since, in the subsequent statement of Hari Singh recorded on 14.12.2016, there is no allegation that Lakharam was having a firearm or that he fired towards the complainant party and as the solitary fatal injury caused to deceased Manohar Singh has been specifically attributed to Raju Singh, this Court is of the opinion that Lakharam deserves to be enlarged on regular bail. Likewise, the petitioners Hari Singh, Pappu Singh, Bharat Kumar and Raan Singh were not named in the FIR despite the fact that the first informant knew them from before. Their names have been introduced in the belated statements of the prosecution witnesses recorded after nearly two months of the incident. In this background, this Court feels inclined to grant indulgence of pre-arrest bail to these petitioners as well.

17. Consequently, Anticipatory bail applications no.2743/2017 and 3173/2017 laid on behalf of petitioners Hari Singh and Pappu Singh, Bharat Kumar and Raan Singh respectively under Section 438 Cr.P.C. and regular bail application no.3245/2017 laid on behalf of the petitioner Lakharam under Section 439 Cr.P.C. are allowed.

18. It is ordered that the accused-petitioner namely Lakharam arrested in connection with F.I.R. No.230/2016, registered at Police Station Ahore, District Jalore shall be released on bail; provided he furnishes a personal bond of Rs.50,000/- and two surety bonds of Rs.25,000/- each to the satisfaction of the learned trial court with the stipulation to appear before that Court on all dates of hearing and as and when called upon to do so.

19. It is further ordered that in the event of arrest of petitioners Hari Singh, Pappu Singh, Bharat Kumar and Raan Singh in connection with F.I.R. No.230/2016, registered at Police Station Ahore, District Jalore, they shall be released on bail; provided each of them furnishes a personal bond in the sum of Rs.50,000/- along with two sureties of Rs.25,000/- each to the satisfaction of the concerned Investigating Officer/S.H.O. on the following conditions :-

(i). that the petitioner(s) shall make himself/herself/themselves available for interrogation by a police officer as and when required;

(ii). that the petitioner(s) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or any police officer; and

(iii). that the petitioner(s) shall not leave India without previous permission of the court.

A copy of this order be placed in each file.