

(2016) 06 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : CRM-15954 of 2016 in CRA-D-326-DB of 2012

Vijay

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 01-06-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 389, 439
Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 3 LawHerald 2551 : (2016) 4 RCRCriminal 539

Hon'ble Judges : Mr. M. Jeyapaul and Mr. Raj Mohan Singh, JJ.

Bench : Division Bench

Advocate : Mr. Vinod S. Ghai, Senior Advocate with Mr. S.S. Sandhu, Advocate, for the Appellant; Mr. Gaurav Goel, AAG, Haryana. Mr. Amol Partap Singh Mann, Advocate, for the Respondent

Final Decision : Allowed

Judgement

CRM-15954-2016

1. Applicant-appellant Ajay moves this application praying for suspension of sentence and grant of bail having undergone 4 years, 3 months and 11 days of imprisonment under Sections 302/149, 341/149 and 427/149 of the Indian Penal Code.
2. Heard the submissions made by learned Senior Counsel for the applicant, learned counsel for the complainant and learned AAG for the State of Haryana.
3. Learned Senior Counsel for the applicant submits that the applicant was summoned only under Section 319 of the Code of Criminal Procedure, as the investigating official had given clean chit to him during the course of investigation. The prosecution has come out with an artificial version that two shots each were fired by accused Vijay, accused Ajay and accused Pardeep. The complainant who is none other than the brother of the deceased has chosen to consult a lawyer even as per his own version before ever he laid the First

Information Report. It is submitted that the First Information Report was prepared by the investigating official distributing the injuries to all the above three accused based on the inquest prepared by the investigating official. It is also brought to our notice by the learned Senior Counsel appearing for the applicant that the doctor has accounted only three gun shot injuries on the person of the deceased. For all these reasons, it is his submission that the applicant is entitled to suspension of sentence and grant of bail.

4. Learned Counsel appearing for the complainant vehemently submitted that there is ample evidence to demonstrate that applicant Ajay opened fire with the licensed weapon of Vijay. The injury on the chest found on the deceased was attributed to the applicant by the eye witness. Considering the lesser period undergone by the applicant the application may be dismissed, it is submitted.

5. Learned counsel appearing for the State of Haryana also submitted that there is ocular as well as medical evidence to establish the role of Ajay in opening fire at the time when the injured was taken to the hospital. It is his submission that Ajay had an occasion to open fire after the Bolero car rammed into the Swift car in which the deceased was taken to the hospital. Further, it is his submission that the applicant had just undergone 4 years 03 months and 11 days and, therefore, it is not a fit case for grant of bail.

6. We have already granted bail to co-accused Raj Kumar and Pardeep, of course considering the role allegedly played by them. It is not in dispute that the complainant, who is the brother of the deceased informed the investigating official that he would consult a lawyer and thereafter, suffer a First Information Report. In fact, the First Information Report has been lodged by the complainant after preparation of Inquest Report wherein the investigating official had noted that six gun shots were found on the person of the deceased. The investigating official in fact had given a clean chit to the applicant during the course of investigation. The applicant was summoned only under Section 319 Cr.P.C. It is not the case of the prosecution that the applicant Ajay came to the spot armed with any weapon.

7. The appeal is of the year 2012. It may take some time for the appeal to mature for final hearing. Therefore, in our considered view, applicant-appellant Ajay has made out a case for suspension of sentence and grant of bail.

8. Accordingly, the criminal miscellaneous application is allowed and the sentence of imprisonment of applicant-appellant Ajay during the pendency of the appeal is suspended and he is ordered to be released on bail subject to the satisfaction of learned Chief Judicial Magistrate/Duty Magistrate, Bhiwani.