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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CRR-1283-2025
Decided on:16.05.2025**

Surender**...Petitioner****Versus****State of Haryana and another****...Respondents****Coram : Hon'ble Mr. Justice Rajesh Bhardwaj**

Present: Mr. Rakesh Nehra, Senior Advocate, with
Mr. Vikas Lochab, Advocate, and
Mr. Vikalp Hooda, Advocate, for the petitioner.

Mr. Sumit Jain, Addl. A.G., Haryana.

Rajesh Bhardwaj, J.

1. Prayer in the present revision petition is for setting aside the judgment dated 16.04.2025 passed by the learned Additional Sessions Judge, Sonipat, whereby an application under Section 358 of the BNSS, 2023 (erstwhile Section 319 of Cr.P.C.) filed by the Public Prosecutor has been allowed and the petitioner has been ordered to be summoned to face trial.

2. Succinctly, the facts of the case are that the FIR in the present case had been lodged on the statement of complainant Kuldeep S/o Puran Singh (hereinafter referred to as "respondent no.2-complainant"), who stated that on 09.09.2023, his brother Mukesh (deceased) and Sumit had gone to buy gravel dust. At about 4 pm., he received a call from Monu, who informed him that someone had shot his brother Mukesh in his office and Sumit and Amit had taken Mukesh to FIMS Hospital, Sonipat in injured condition. He immediately rushed to FIMS Hospital, Sonipat and found his brother Mukesh in emergency ward in injured condition. He told him that there was a transaction of Rs.50 lacs of commission with Surender Barwasni (petitioner herein) for purchase and sale of property, however, he was refusing for the same and on account of

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that, Surender had quarrelled with him about 10-15 days ago and he was threatened to be killed as well at that time. On the day of occurrence, when he was sitting with Amit and Sumit in his office, 10-12 boys came to Sumit's store in two white colour cars, i.e. Fortuner and Desire. Out of those, three boys came out of the car and asked about Mukesh. He suspected that Surender Barwasni and Virender Jain had sent them to beat him up. In the meantime, one of the boys entered the office and made a video call on his mobile. He turned the phone towards them and asked the caller to identify Mukesh out of the persons present in the office. Then, the caller identified him to be Mukesh and out of fear, he rushed to another room and locked the room. However, the assailants started firing on the door and broke it open with some weapon and entered the room. Out of those boys, three of them were Sunny, Akshay and Mohit and they were accompanied by 9-10 boys. They started firing with their pistols by proclaiming that they had interfered in the property matter of Surender Barwasni and Virender Jain. After having suffered bullet injuries, he was shifted to the hospital by Sumit and Amit. The complainant stated that thereafter the doctors informed the complainant that his brother Mukesh had died during treatment. He alleged that Mukesh was murdered by shooting at the behest of Surender Barwasni and Virender Jain and requested for taking legal action against the culprits.

3. On registration of the FIR, the investigation commenced, however, during investigation, the petitioner was declared innocent by the investigating agency and, thus he was kept in column no.2. On presentation of challan, the charges were framed and the trial commenced. During trial, Mehtab Singh, brother of Mukesh (deceased) had been examined as PW1 and during his cross-examination, he deposed against the petitioner Surender Barwasni that he had sent the assailants to kill his brother Mukesh (deceased). He, thus, deposed before the Court that statement of Mukesh (deceased) should

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be treated as “dying declaration” and finding the same as reliable evidence to proceed against the petitioner, the prosecution filed application for summoning him under Section 358 of BNSS, 2023 to face the trial along with the other accused, who are already facing the trial. The learned trial Court, after hearing both the sides on the application filed under Section 358 of the BNSS, 2023, allowed the same vide the impugned order dated 16.04.2025. Hence, aggrieved against the said order, the petitioner is before this Court by way of filing the present petition.

4. Learned Senior counsel appearing on behalf of the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. A thorough and fair investigation was carried out and on conclusion of investigation, the allegations made against the petitioner were not found to be substantiated and hence, the investigating agency declared him innocent by putting him in column no.2. It is submitted that the trial Court has examined Mehtab Singh, brother of deceased Mukesh, as PW1, complainant Kuldeep as PW2 and Sumit, eye witness, as PW4, however, all the said witnesses have not supported case of the prosecution but the learned trial Court miserably failed to appreciate their evidence and, thus, illegal summoned the petitioner. He submitted that the video clips produced before the trial Court were allegedly recorded by PW4 Sumit but he has not supported the case of the prosecution. Hence, the view taken by the learned trial Court while relying upon the said video clips is unsustainable in the eyes of law. It is submitted that the petitioner has been summoned only on the basis of presumption and assumptions but the same is against the law settled by Hon’ble the Supreme Court in case of **Hardeep Singh vs. State of Punjab**, 2014(3) SCC 92. He, thus, submitted that the impugned order, being in violation of the law settled by Hon’ble the Supreme Court, deserves to be set aside.

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5. *Per contra*, learned State counsel has vehemently opposed the submissions made by learned Senior counsel for the petitioner and has submitted that there were ample evidence against the petitioner and, thus, the impugned order does not suffer from any infirmity and hence, the present revision petition deserves dismissal being denuded of any merit.

6. I have heard learned counsel for the parties and perused the available record with their able assistance.

7. It is deciphered from the case of the prosecution that the petitioner was specifically named in the FIR. The FIR in the present case though has been lodged on the statement of respondent no.2-complainant Kuldeep, however, perusal of the said FIR would show that the complainant had stated that before his death, his brother Mukesh had told him details of the entire occurrence and it has been alleged that the deceased had specifically told him about the motive of the attack opened upon him as he was having a dispute with the petitioner on account of money transactions between him and the petitioner. It has been contended that once the deceased had given the statement before his death to the complainant, the same be treated as a “dying declaration”. The prosecution examined Mehtab Singh as PW1, complainant Kuldeep as PW2 and Sumit, eye witness as PW4. Though these witnesses turned hostile, however, they have been cross-examined and during their cross-examination, they were confronted with two video clips contained in pen drive Ex.MO-1 and as per the record, the said video clips contained the material evidence supporting allegations against the petitioner, which has rightly been appreciated by the learned trial Court while summoning the petitioner under Section 358 of the BNSS, 2023. For appreciation of the issue involved, Section 358 of BNSS, 2023 is relevant, which is reproduced here-as-under:-

“358. Power to Proceed against other persons appearing to be guilty of offence.

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- (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.
- (2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.
- (3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.
- (4) Where the Court proceeds against any person under sub-section (1), then-
 - (a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;
 - (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

8. On appreciation of the facts and circumstances of the present case, it is evident that the petitioner has been alleged to be the person behind the murder of deceased Mukesh. The FIR has also been registered on the allegations that the deceased himself had told about the involvement of petitioner to the complainant. Whether the alleged statement is a “dying declaration” or not is a matter of trial and the Court would refrain from commenting on the same at this stage. However, besides the cross-examination of witnesses PW1 Mehtab Singh, PW2 Kuldeep and PW4 Sumit, two video clips contained in pen drive Ex.MO-1 has also been produced, which finds favour with the trial Court to be treated it as *prima facie* “evidence” to summon the petitioner under Section 358 of the BNSS, 2023, while gazing the same within the guidelines laid down by the Supreme Court in **Hardeep Singh’s case (supra)**.

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9. Thus, while weighing overall facts and circumstances of the present case on the anvil of the law settled, this Court finds no infirmity in the impugned order passed by the trial Court and hence, the present revision petition is hereby dismissed being denuded of any merit.

May 16, 2025
vinod*

(Rajesh Bhardwaj)
Judge

Whether Speaking/Reasoned: NO/YES
Whether Reportable: NO/YES