

**Brij Mohan @ Mohan @ Pappu Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/696141](http://sooperkanoon.com/696141)

**Court :** Delhi

**Decided On :** Jul-15-1997

**Reported in :** 1997IVAD(Delhi)586; 1997CriLJ4266; 68(1997)DLT779;  
1997(42)DRJ469

**Judge :** J.K. Mehra, J.

**Acts :** [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 439

**Appeal No. :** Cri.M.(M) No. 931 of 1997

**Appellant :** Brij Mohan @ Mohan @ Pappu

**Respondent :** State

**Advocate for Pet/Ap. :** D.C. Mathur,; R.K. Naseem,; R.M. John,;

**Judgement :**

**J.K. Mehra, J.**

(1) This is an application for bail by one of the accused. I have heard the parties at length. In this case the only role assigned to the petitioner is that of exhortation and not handling fire arm or taking part in actual shooting which resulted in killing of one person and injuries to another.

(2) As per the allegations contained in the charge-sheet, one Pawan Kumar Gulati Along with his cousins who had their office at 26, Parada Bagh, Darya Ganj, New Delhi had come down to his office at 4.30 p.m. allegedly to go back to his house. While they were standing on the side walk near the car, the petitioner and his brothers Mohar Singh and Jai Chand Along with a fourth un-identified person came from their office across the road, also in Daryaganj, in white Maruti Car. It is further alleged that the car by which the petitioner was traveling was being driven by his brother Mohar Singh, the principal accused, who turned back the car and stopped it near the deceased and his cousins. Mohar Singh came out of the car. Jai Chand and the petitioner came out of the car and exhorted their brother Mohar Singh to finish the deceased and others. It was at that time Mohar Singh took out the revolver and fired at the complainant Raj Kumar and his cousins who were injured with bullet injuries. As a consequence thereof, the deceased Pawan Gulati succumbed to the injuries before reaching the L.N.J.P. hospital. The prosecution has alleged bad blood between the victims and the assailants on the ground of some previous dispute which led to registration of a case under Section 324 of Indian Penal Code . vide Fir No. 435/95. On further checking up, it is found that the present petitioner is not named in the said FIR. On the first day, the counsel for the complainant who was permitted to assist the Court pointed out that the petitioner apart from his brothers was a history sheeter. For that reason I wanted to check up the details in the history sheet and had adjourned the matter to 30th May, 1997. The Investigating Officer has filed an affidavit wherein he has categorically stated that in the complaint against the petitioner and his brothers the complainant in the supplementary statement had stated that the petitioner was not present at the place of occurrence and that the charge-sheet was not presented against the petitioner. therefore, to that extent the information of the counsel for the complainant was incorrect. The second matter which was registered under section 107/150 of Cr.P.C. because of alleged incident of 15th February, 1997 reported vide D.D. entry No. 14, was also found not to be a fit case for proceeding against the petitioner and the petitioner in this case was also discharged. Nothing by way of history sheet could be produced before me in respect of the present petitioner. It appears that there is bad blood on both sides. However, despite best efforts the respondents have not been able to make good even one allegation of

the petitioner's involvement in any of the incidents alleged against him. The petitioner is not having any other case pending against him. Admittedly, there cannot be a case against the petitioner under Arms Act as he was not having any arm on his person at the time of the incident nor was he in any manner actively participating in the shoot-out. Exhortation is altogether different from participation.

(3) Mr. Lekhi has relied upon the following decisions of the Hon'ble Supreme Court and a decision of this Court which are set out as mentioned hereunder:-

1. Rishideo Pande vs . State of Uttar Pradesh : 1955 CriLJ873 .

2. Talab Haji Hussain vs . Madhukar Purshottam Mondkar and another : 1958 CriLJ701

3. State of U.P. vs . Iftikhar Khan and others : 1973 CriLJ636 .

4. Ramaswami Ayyangar and others vs . State of Tamil Nadu : 1976 CriLJ1563 .

5. The State of Rajasthan, Jaipur, vs . Balchand : 1978 CriLJ195 .

6. Gurcharan Singh and others vs . State(Delhi Administration) : 1958 CriLJ701 .

7. Bhagirathsingh Judeja vs . State of Gujarat : 1984 CriLJ160 .

8. 1969 Cri L.J. 254

(4) None of the aforesaid rulings lay down that if the principal accused avails political influence and the police does not arrest him for the reason of such political influence, his brother who is not having such influence and is accused of a much lesser offence should be denied bail. The main thrust of his argument was that it is not a fit case where the petitioner who is a real brother of the desperado principal accused Mohar Singh be released on bail as the said Mohar Singh is yet to be arrested. The Investigating Officer has stated in the affidavit that he has not arrested Mohar Singh on account of his political influence. That is a very sad commentary on the system and its efficiency. A person, who is a history sheeter, is not being arrested by the Police because he can avail of political influence and yet his real brother who is not involved in any other criminal case nor has he got any

history sheet contrary to what was being alleged at the Bar is being detained since the day he surrendered in October, 1996. It is a matter for the authorities to carefully look into as to why and how Mr. Mohar Singh could not be detained and what kind of political influence was being brought to bear on the Police officer which restrained him from discharging his duties. Appropriate corrective action is the bare minimum which the authorities should report to for this is the least that they owe to the society. Mr. Lekhi while referring to the case of State of Rajasthan, Jaipur vs. Balchand (supra) has observed that the basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. Mr. Lekhi while referring to this case tried to argue that it will not be safe to enlarge the petitioner on bail but from the facts set out hereinabove, no case has been made out to decline the bail. Only two complaints which were filed against the petitioner resulted in the inference of his involvement not being there. All the rest of the rulings are also basically reiterating the same principle of law with which there cannot be any quarrel but he has not cited where facts were similar to the present case. I cannot accept a hypothesis that if the elder brother is a desperado and is not being arrested by the authorities on account of his political influence they should in his place detain the younger brother over though he is not really involved in the actual commission of offence and at best can be guilty of a much minor offence as compared to his brother's act. In view of the above, I am unable to accept Mr. Lekhi's argument that the petitioner, if released, will over-awe the witnesses even though the authorities are not arresting the main accused, who is alleged to be a desperado.

(5) I think it will not be just and proper, in the circumstances, to decline the bail to the petitioner. I may further add that the petitioner has been in custody since October, 1996 and after the conclusion of the arguments also I was not, due to paucity of time, able to deliver the judgment before the vacation resulting in further detention of the petitioner for the month of June as well. This period, I consider, more than sufficient to enable the law enforcement agency to be in a position to move and act to detain the principal accused whom they appear to be not

detaining for extraneous considerations and also to complete their investigations. I find no justification in declining bail to this accused. therefore, I direct that the accused petitioner be enlarged on bail on his furnishing a personal bond in the sum of Rs. 30,000.00 with two sureties of the like amount to the satisfaction of the Trial Court/Duty Magistrate. This bail is subject to the condition that the petitioner shall appear on each and every date of hearing before the Trial Court when the trial commences and prior thereto he shall report to the I.O. as and when required by him on a written requisition. The accused petitioner shall also not leave the Nct of Delhi without prior permission of the I.O./ Court concerned.

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