

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-22609 of 2015

Date of Decision: December 24, 2015

Sunil

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Abhilaksh Grover Advocate
for the petitioner.

Mr. C.S. Bakshi, Addl.A.G., Haryana.

Mr. Gaurav Rana, Advocate for the complainant.

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M.M.S. BEDI, J.

This is second petition filed by Sunil for grant of regular bail during the pendency of the trial. The first petition was dismissed on October 6, 2014.

When confronted as to what are the changed circumstances for grant of regular bail, counsel has submitted that the earlier petition was dismissed on the ground that the petitioner was a member of unlawful assembly which had caused injury on three persons and death of one person.

Counsel for the petitioner has also submitted that the petitioner had been declared innocent after thorough investigation conducted under the supervision of DSP, Palwal and that before being declared innocent by DSP Palwal, he was also declared innocent by DSP, Hathin on October 16, 2012. After consideration of the reports of DSP Hathin dated October 16, 2012 and DSP Hodal dated March 30, 2013 and finding of Jai Vir Singh, DSP (HQ), Palwal, Jagat Singh, SP, Police had found the petitioner innocent. Challan was presented on March 8, 2013 and the name of the petitioner was kept in column No.2, as innocent but the petitioner was again arrested on February 22, 2014 after the Crime Branch, Panchkula further investigated the matter and submitted its report arraying the petitioner as an accused. A report under Section 173 (8) Cr.P.C. was submitted on May, 2015 and the petitioner was remanded to judicial custody. Sikander and Naresh were again kept in column No.2 in the supplementary challan dated April 18, 2014. It is pertinent to mention here that the first challan is being tried under the title State Vs. Vikram etc., however, the supplementary challan submitted against the petitioner on April 22, 2014 has been ordered to be tried separately as State Vs. Sunil vide order of the trial Court dated February 25, 2015, as the accused in case State Vs. Vikram etc. are in custody and large number of witnesses stand examined.

Learned counsel for the petitioner has submitted that the petitioner has not been attributed any injury and that he has been arraigned as an accused after he having been declared innocent at the time of

presentation of challan in case State Vs. Vikram etc. and on account of duel version qua him, he can be granted the concession of bail.

Brief facts of the case are that FIR No. 177 dated May 22, 2012 was registered at the instance of Kaptan Singh alleging that on May 21, 2012 at about 3.00 p.m. his nephew Akash had a tiff with Rahul as a result of which Rahul had given slap and punch to Akash, therefore, the complainant had gone to the house of Vikram with the complaint of Rahul. Vikram felt annoyed and threatened that he would teach a lesson for making a complaint. On the same day at about 6.30 p.m. while the complainant and his son Bhisham, his nephew Prince and Dheeraj were sitting at that time petitioner alongwith Prahlad, Surender and Hansraj sons of Dashrath and Rahul son of Vikram came there armed with weapons and started abusing them. When they were told to stop abusing, three young boys, namely, Sunil, Rohtash and Sikander came on motorcycle on the spot. On their exhortation, Surender fired a shot at the son of the complainant with his country made pistol. The shot hit on the forehead of Bhisham. Hans Raj also fired a shot at Prince with his country made pistol hitting him on the left hand whereas the petitioner also fired a shot from his country made pistol which hit on the left foot of the complainant and whereas non-petitioner Rahul gave a saria blow hitting the complainant on the back. Rahul also allegedly fired from his country made pistol at the complainant which did not hit him whereas Vikram gave a bottle blow at the head of Dheeraj. Parhlad gave a saria blow on the head of Dheeraj. Sikander also fired at the

complainant with an intention to kill him. Sunil, non-applicant also fired many shots with an intention to kill but they had narrow escape. Thereafter 4/5 boys pelted stones and bricks. Thereafter Sunil, Rohtash and Sikander escaped on their motorcycle while firing with their respective weapons whereas complainant alongwith Dheeraj, Prince and Bhisham were taken to hospital in a private vehicle. Bhishan expired on the way before reaching Palwal.

Petitioner Sunil, as per the allegations in the FIR had come on the motorcycle later on and had allegedly opened fire but the complainant party had narrow escape.

As mentioned hereinbefore, the trial against the petitioner has been ordered to be held separately vide order dated February 25, 2015. The petitioner was declared innocent in the first case. No application was filed by prosecution in the first case to summon him as an additional accused under Section 319 Cr.P.C. but on the basis of the investigation entrusted to the crime branch, a supplementary challan under Section 173 (8) Cr.P.C. has been filed, on the basis of involvement of the petitioner as a member of unlawful assembly. After dismissal of the first petition on October 6, 2014, the most of the material witnesses have been examined in the first challan. On the basis of the statement made by Kaptan Singh as PW1, additional accused Naresh and Sikander had been summoned in the case State Vs. Sunil under Section 319 Cr.P.C. The summoning order has been challenged by Naresh on the ground that he having been found innocent twice, has

again been attributed the same role by the complainant by appearing in the Court. In view of the fact that the petitioner has not been attributed any specific injury and he having arrived on the spot on the motorcycle later on, he can be granted the concession of bail at this stage.

Taking into consideration the period of detention suffered by the petitioner; main star witness having already been examined; chances of tampering with the evidence are remote; dual version qua the petitioner having already cropped up regarding his involvement on account of he having been declared innocent more than two times; petition is allowed. Petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the trial Court.

December 24, 2015
sanjay

(M.M.S.BEDI)
JUDGE