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

CRM-M-26861-2015
Date of decision : 14.12.2015

Devinder Singh

..... Petitioner

VERSUS

State of Haryana

..... Respondents

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

Present: Mr. R.S. Mamli, Advocate for the petitioner.

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

Mr. N.S. Shekhawat, Advocate for the complainant.

M.M.S. BEDI, J.(Oral)

The petitioner has been in custody with effect from 11.05.2013 in a case registered on the complaint of Ranjit Singh alleging that a large number of boys constituted on unlawful assembly and came in two cars, a Safari and a Balero, outside M.L.N College, Radaur, where the nephew of the complainant had come for taking examination. The members of the unlawful assembly were armed with various weapons and committed murder of his nephew.

So far as the petitioner is concerned, allegation against him is that he was present in the car as member of unlawful assembly and had taken the vehicle at the back side of

the said college for the purpose of keeping a vigil while crime was being committed.

It is pertinent to observe that this is a second application for bail. First was withdrawn at an early stage of the trial, in January, 2014.

The application for bail has been opposed on the ground inter alia that all the prosecution witnesses having already been examined, the petitioner should not be granted the concession of bail.

Counsel for the complainant also opposed the application for bail contending that the name of the petitioner is mentioned by PWs Ghanshyam, Ranjit Singh and Gaurav in their statements and that PW Jagdish Lal had also stated in his statement before Court that the petitioner was sitting in a Balero car which had been parked at the back side of the college to watch the crime being committed.

I have taken into consideration the circumstances of the present case for grant of bail to the petitioner. Though the appreciation of evidence is not appropriate at this stage but counsel for the petitioner has, on asking of the Court, placed on record the statements of all the four witnesses in order to enable this Court to prima facie appreciate the culpability of the petitioner as he has been in custody for more than 2½ years. The trial has reached the stage of recording of statements of the

defence witnesses, where 17 accused have to produce their defence evidence.

Without expression of any opinion on merits of the case, but after perusal of the statements of all the four witnesses, I am of the opinion that petitioner can be granted the concession of bail for the following reasons:

- (i) the petitioner has been in custody for the last 2½ years;
- (ii) statements of PWs Ghanshyam, Ranjit Singh and Gaurav made on oath in the Court indicate that they have not named the petitioner to be present in Balero car superseding in consonance of their earlier statements under Section 161 Cr.P.C. So far as PW-Jagdish Lal is concerned his statement made on oath regarding the petitioner in Balero car would be a debatable issue as said witness in his statement under Section 161 had not named the petitioner;
- (iii) the petitioner having conspired with other members of unlawful assembly in view of the evidence available on the record, will be required to be appreciated at the time of determining his culpability finally.

(iv) chances of tampering with the evidence are absolutely remote at this stage as all the material witnesses have already been examined.

The petition is accordingly allowed. The petitioner, without expression of any opinion on merits, is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the trial Court.

December 14, 2015
Ramandeep Singh

(M.M.S. BEDI)
JUDGE