

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

CRM No.M-43166 of 2013(O&M)

Date of decision:26.05.2015

Ajay

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Jagjit Beniwal, Advocate and
Mr. Harish Nain, Advocate for the petitioner.

Mr. M.S. Sidhu, Additional Advocate General, Haryana.

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TEJINDER SINGH DHINDSA, J.

CRM No.23502 of 2014:

Application is allowed as prayed for. Documents at Annexures
P-6 and P-7 are taken on record.

Disposed of.

CRM No.6256 of 2015:

Application is allowed as prayed for. Documents at Annexures
P-8 and P-9 are taken on record.

Disposed of.

Main case:

This order shall dispose of the instant petition filed under
Section 439 Cr.P.C. seeking the benefit of regular bail to the petitioner in
case FIR No.141 dated 06.05.2011, under Sections 148/149/307/302 IPC
and Section 25 of the Arms Act, registered at Police Station Kalanaur,
District Rohtak.

Counsel for the parties have been heard at length.

FIR was registered on the statement of Sita Ram s/o Suraj Mal. Deceased is Vishnu brother-in-law of the complainant.

As per complainant's version, the incident occurred on 06.05.2011 and Sita Ram, who was doing the work of a commission agent in the Ananj Mandi was present at his shop and a number of his relatives had come for selling wheat including deceased Vishnu. At that point of time, members of Gaushala Committee had visited the shop of the complainant and had demanded donation. Complainant has made a statement that upon a higher donation having been demanded, he had stated that one Balli Pehlwan owed him Rs.5 lacs and if the members of Gaushala Committee were to get back such amount he would donate half of the same to the Committee. Such conversation having been revealed to Balli Pehlwan, he along with certain companions reached the shop at about 7 PM and whereupon, it is alleged that Balli Pehlwan fired a shot from his revolver, which hit Vishnu and Sombir. Balli Pehlwan then is stated to have extorted his companions that none of the family members of Sita Ram should survive and whereupon, Naresh and Rishi have fired with their respective guns upon Krishan. Nephew of Balli Pehlwan i.e. Satish had fired upon Naveen. Rajesh, Pawan, Kala and Ranbir are also stated to have fired blindly with their respective weapons. Fire Arm shots were even attributed to Sulad and Mukesh. Vishnu is stated to have died on account of bullet shot injury and a number of other persons including Sita Ram also suffered gun shot injuries.

In the initial statement recorded of Sita Ram, who was an eye witness as also injured in the occurrence, name of the present petitioner did not even figure. Placed on record at Annexure P-6 is a supplementary

statement recorded of Sita Ram i.e. on 13.05.2011 in which also he did not named Ajay. Also placed on record at Annexure P-8 is the deposition and statement of Sita Ram before the trial Court as PW1 in which also specific gun shot attributions have been made against other co-accused and insofar as the present petitioner is concerned, it was stated that he had accompanied accused Balli Pehlwan on the date of occurrence.

Learned State counsel would, however, vehemently oppose the prayer made in the petition by contending that in the statement recorded under Section 161 Cr.P.C. as many as 6 persons, who were present on the date of occurrence and some of them who were also injured have specifically named the petitioner.

The petitioner has been in custody since 06.06.2011.

It has gone uncontroverted that the trial has not made headway inasmuch as, till date, only complainant, Sita Ram, PW1 has been examined as yet. Prosecution is stated to have filed an application under Section 319 Cr.P.C. seeking summoning of certain other persons as additional accused and such application is still pending adjudication before the trial Court. In other words, the trial is at the very initial stage.

Offence under Section 302 IPC as to whether made out against the present petitioner would be a moot question to be considered during the course of trial.

In the light of the observations made herein above and coupled with the length of incarceration already suffered by the petitioner, he is held entitled to the concession of bail.

Accordingly, petition is allowed. Petitioner, Ajay be enlarged on bail subject to the satisfaction of trial Court.

It is, however, clarified that the observations made in this order are confined only as regards considering the prayer of the petitioner for grant of regular bail and would have no bearing on the merits of the case.

Disposed of.

26.05.2015

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**