

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

CRM No.M-21591 of 2018 (O&M)

Date of Decision: 27.09.2018

Omwati

... Petitioner

Versus

The State of Haryana

... Respondent

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

Present:- Mr. R.S.Rai, Senior Advocate with
Mr. Karan Pathak, Advocate,
for the petitioner.

Mr. P.K.Jangra, Additional Advocate General, Haryana.

Mr. R.S.Khosla, Senior Advocate with
Ms. Ishrat Phulka, Advocate,
for the complainant.

TEJINDER SINGH DHINDSA, J.

CRM No.28323 of 2018

Application is allowed, as prayed for.

Copy of statement of Het Ram Chauhan son of Jhagdu
recorded under Section 161 Cr.P.C. is taken on record as
Annexure P-5.

Application disposed of.

Main Case

Instant petition has been filed under Section 439 Cr.P.C.
praying for grant of regular bail to the petitioner pending trial in
case FIR No.110 dated 18.09.2017, under Sections

148/149/302/307/323/452/506 IPC and 25 of Arms Act, registered at Police Station, Kheri Pul, District Faridabad.

Counsel for the parties have been heard.

Briefly noticed, FIR was registered on the statement of Lalit Kumar in relation to an occurrence that took place in the late evening hours of 17.09.2017. In such occurrence, 05 persons lost their lives on account of firearm injuries including father of the complainant and 06 others suffered injuries including the complainant himself.

As per version of complainant Lalit Kumar, he is a resident of Village Palwali, Police Station Kheri Pul, District Faridabad and an Advocate by profession. At about 9/9:15 p.m. on 17.09.2017 he heard some noise of a fight having broken out and abuses being exchanged and, accordingly, complainant along with his father Rajender Parshad and brother Nitesh came out of the house. Complainant has specifically named 26 accused along with 10-12 other persons to be standing in the street in front of his house and all of them having guns, revolver, farsas, katta, dandas, lathis and iron rods. Further asserted that at that stage other members of his family as also from the neighbourhood gathered at the spot. The accused persons specifically named are stated to have launched an attack with the weapons that they possessed. In such incident, Rajender Parshad father of the complainant, Ishwar Chand, Shri Chand, Naveen and Devender @ Pintu died on account of firearm injuries. 06 others also suffered injuries. Motive attributed by the complainant is that Dayawati w/o Billu @

Virender is presently Sarpanch of Village Palwali and during the election process the complainant party had not helped Virender @ Billu on account of which a grudge was being nursed and to settle scores all the accused mentioned in the FIR being armed had collectively launched an attack.

It may be noticed that petitioner herein was not named in the FIR.

Petitioner is sought to be implicated on the strength of a statement recorded of Het Ram Chauhan under Section 161 Cr.P.C. on 28.09.2017. Such statement has been placed on record and appended as Annexure P-5.

As per statement of Het Ram Chauhan, at around 9/9:30 p.m. on 17.09.2017 upon having noticed a clamor on the street he had come out of the house and saw a crowd gathered outside the house of Lalit Kumar (complainant) and a brawl taking place. As per statement, Dayawati wife of Virender @ Billu and Omwati wife of Nand Kishore (present petitioner) came from the side of the house carrying a rifle and revolver respectively and Omwati is stated to have handed over the revolver to co-accused Dharmender.

As per prosecution version, present petitioner was a part of the unlawful assembly and had played an active role in the crime having been perpetrated inasmuch as a firearm had been handed over by her to co-accused Dharmender.

Since there was stated to be a CCTV footage also pertaining to the occurrence, it would be apposite to refer to the

reply filed by way of an affidavit dated 02.07.2018 of Atma Ram, HPS, Assistant Commissioner of Police, Central Faridabad and placed on record.

As per affidavit, there was no CCTV installed at the place where the offence was committed. However, there was a CCTV camera installed on an electric pole in front of the house of accused Virender @ Billu and which had captured the movement of certain persons going towards the place of occurrence.

In the affidavit dated 02.07.2018 filed on behalf of the State, it has been clearly deposed that the CCTV footage only shows the petitioner and another lady going towards the place of occurrence but empty handed. As per affidavit, role of the present petitioner in the commission of crime has not been captured in the CCTV footage.

Prima facie the statement of Het Ram Chauhan recorded under Section 161 Cr.P.C. (Annexure P-5) is at variance to the contents of the affidavit dated 02.07.2018 filed on behalf of the State. That apart even in such statement recorded of Het Ram Chauhan, he had not witnessed the actual occurrence. He stated that upon apprehending a fight, he went back inside the house and bolted the door and later on came to know that 05 persons had died on account of bullet injuries and 06 others had suffered injuries.

Petitioner was arrested on 19.09.2017.

Complainant has specifically named 26 other co-accused and has even assigned specific roles to some of them.

Complainant as also the accused/petitioner herein are residents of the same Village Palwali and it can be safely presumed that the complainant was aware of her identity. He has, however, not chosen to identify and name the present petitioner to be a member of unlawful assembly who had launched the attack. Petitioner as such was not even named in the FIR.

Involvement and implication of the petitioner on the strength of statement of Het Ram Chauhan under Section 161 Cr.P.C. would be debatable.

Even the CCTV footage which otherwise does not cover the occurrence, at best shows movement of the present petitioner but empty handed.

On a previous date of hearing i.e. 01.06.2018, petitioner had been admitted to interim bail.

It is not the case made out on behalf of the State or the complainant party that the petitioner has misused the concession of interim bail.

In view of the discussion hereinabove coupled with the length of incarceration already suffered and also keeping in mind that the petitioner is a 57 year old lady, the prayer made in the present petition is accepted.

Petitioner be enlarged on regular bail subject to satisfaction of the trial Court/Duty Magistrate concerned.

It is, however, made clear that the observations made in this order are confined only with regard to considering and examining the prayer for grant of regular bail to the petitioner and

would have no bearing on the merits of the case.

Disposed of.

27.09.2018

vandana

Whether speaking/reasoned

Whether Reportable

(TEJINDER SINGH DHINDSA)

JUDGE

Yes

No