

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM M-53664 of 2018

Date of Decision: February 20, 2019

Sher Singh @ Shera

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU.

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Present:- Mr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Pratham Sethi, Advocate, for the petitioner.
Mr. Yashwinder Singh, DAG, Haryana
Mr. D.P. Shishodia, Advocate for the complainant.

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MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 439 Cr.P.C. for seeking bail pending trial in FIR No. 83 dated 28.06.2018 under Sections 120-B/148/149/302/307/323/427/506/201 IPC read with Sections 25 and 30 of the Arms Act and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Police Station Kalka, District Panchkula.

The FIR case was registered at the instance of complainant Yog Raj @ Pinki son of Sucha Ram caste Gujjar resident of Village Majra Mehtab, P.S. Kalka, aged 28 years with the allegations that on 28.6.2018, he along with his friends, Satish @ TT resident of Majra Mehtab, Aman son of Satpal, Deepa @ Dalip, Lakhwinder @ Happy, Harvinder @ Pola residents of Majra Mehtab and Vikram @ Vicky (since deceased) resident of Ghatiwala, Pinjore, Mahender @ Minder son of Lajja Ram, Village Majra Mehtab gathered at Paploha at a sand outlet for birthday celebration of Vikram @ Vicky. At about 4.30 PM six vehicles from the side of Kherawali having

about 30 young boys armed with sticks, swords, rods, guns etc. came there and he saw Umesh Kumar @ Matru, Akram resident of Panga Majri, Ishar Nagar, Pamma resident of Baddi armed with .12 bore guns and Gurmeet @ Roda resident of Sukhomajri, Madan @ Maddu, Satta resident of Manakpur, Makhan resident of Sukhomajri, Rinku resident of Kattal Barottiwala, Gola resident of Khada Pathar Wasudevpura, Deepu Kaimbwala, Sourav Jassu resident of Pinjore, Billa resident of near Chikan, were armed with pistols and swords and they started indiscriminate firing. After noticing firing, Vikram @ Vicky Kammy tried to hide himself on the rear seat of Scorpio No. HR49-C-9358, but Umesh Kumar @ Matru, Pamma Baddi and Akram fired instantaneously and due to that Vikram @ Vicky died on the spot inside the Car. When they tried to save themselves, then Makhan Sukhomajri, Madan @ Maddu, Gurmeet @ Roda Sukhomajri, Gola resident of Khara Pathar, Rinku r/o Kattal Barottiwala, Billa resident of Chikan, Satta Manakpur, Deepu resident of Kaimbwala, Ram Gopal @ Pallu R/o Kona, Sourav Jassu, Yashpal @ Yashu Resident of Tagra Hansua, ran after them while firing along with other boys and on account of this Dalip @ Deepa suffered a gunshot injury on his waist, Lakhwinder @ Happy a gunshot injury on his arm, Mahinder @ Minder suffered a sword blow, Harvinder @ Pola a gunshot injury, Nirmal @ Happy suffered a rod blow. On hearing the firing, people started gathering there and all the assailants damaged Alto Car also bearing Registration No. HR-49-C-7838 with their rods and while firing they ran away towards Kalka side in their respective vehicles. All these assailants had come on the place of occurrence at the

instance of Bhupinder Singh @ Babu and Sham Lal Tagra to murder him (complainant) and his friends. All the accused came there on account of previous enmity of the complainant with Bhupinder Singh @ Babu and Sham Lal Tagra in order to take the revenge they had sent about 30 young boys of their gang to kill the complainant as well as others and Vikram @ Vicky died on the spot whereas others sustained injuries. Bhupinder @ Babu and Sham Lal Tangra connived with each other and sent 30 boys in order to commit the crime and they came in two white colour Scorpio, one white colour Verna car, One white colour Brezza, one white Swift car and one Alto Car of golden colour.

Learned Senior counsel Mr. Anmol Rattan Singh assisted by Mr.Pratham Sethi has contended that the petitioner is not named in the FIR and his name was surfaced on the basis of disclosure statement of co-accused Bittu who was arrested on 05.07.2018, and on the basis of disclosure statement, the name of the petitioner was included as accused to be a Driver of Scorpio and he was arrested on 01.08.2018. The alleged recovery of mobile, two sims and Scorpio vehicle No. HP-93-9898 were shown to be effected on 02.08.2018 on the disclosure statement of the petitioner. He was falsely implicated in this case due to old enmity between petitioner and the complainant as the brother of the petitioner has lodged FIR No. 239 dated 12.09.2016 at Police Station Baddi District Baddi (Himachal Pradesh) against the complainant. Further contends that report under Section 173 Cr.P.C. against the petitioner was submitted on 27.09.2018 and the charges have also been framed by learned trial Court

on 04.02.2019 and now the case is fixed for prosecution evidence on 08.03.2019. Also contended that there are more than 50 prosecution witnesses, therefore, the trial is likely to take a long time and as such further custody of the petitioner will not serve any purpose.

In pursuance to the notice of motion issued by this Court, reply by way of affidavit of Mr. Rajneesh Kumar, HPS, Deputy Superintendent of Police, State Crime Branch, Haryana, Panchkula has been filed and on the basis thereof, it is contended by learned State counsel that present petitioner is an active member of BSB (Bhupinder Singh Babbu) gang who is having a rivalry with the opposite gang i.e. SMG (Sanju Majra Group) and the present occurrence has taken place for taking revenge by the BSB gang that resulted into the murder of one Vikram @ Vicky by a gunshot and other persons also suffered gunshots, sword as well as rod blow injuries. Further contends that two main accused, namely, Umesh Kumar @ Matru and Akram, who fired gunshot injuries are still at large alongwith some of the assailants and in case the petitioner is granted the concession of bail he will not only threaten the prosecution witnesses but most likely to hamper the smooth investigation which is pending against other co-accused.

Heard learned counsel for the parties and perused the paper book.

The fact remains that at the first instance petitioner is not named in the FIR but his name surfaced as an accused on the basis of disclosure statement suffered by co-accused and the petitioner got recovered one Mobile, two SIM cards and a Scorpio Vehicle bearing No. HP-

93-9898 which was driven by him and used in the crime. This fact is further corroborated by Pammi, the owner of Scorpio, in his statement under Section 161 Cr.P.C. to the effect that the petitioner had borrowed the same on the date of incident. Facts of the present case reveal that Vikram @ Vicky has been murdered in a pre-planned manner by an unruly mob of more than thirty accused who came in the six different vehicles including two white colour Scorpio, One white colour Verna, one White Colour Brezza, One white colour Swift and One Alto of golden colour, armed with deadly weapons i.e. .12 bore guns, swords, rods etc. and fired indiscriminately. Such types of incidents are anti-thesis to the rules of law in a civilized society. There is sufficient material on record collected by the investigating agency for complicity of the petitioner in the commission of alleged crime along with other co-accused. Moreover, the affidavit on behalf of the State reveals that petitioner has also been named by his co-accused Hem Raj, Makhan, Satnam, Ganesh, Pamma @ Chaman Lal, Pawan @ Pappi and Darshan. He used mobile No. 8219901764 and 9892900002 on the date of incident and talked to his two accomplice, namely, Darshan on his Mobile No. 9882190005 and Madan @ Maddu on Mobile No.8396850092 and the same has also been duly verified as per the tower location.

Even otherwise, the petitioner has actively participated in the entire episode resulting into the murder of a young Scheduled Caste boy and causing injuries to others and now the case is fixed for prosecution evidence on 08.03.2019 and as such there is every possibility that release of

the petitioner on bail will hamper the proceedings before learned trial Court as well as the pending investigation against the remaining others including the two main co-accused.

Before parting with the order it is necessary to mention here that at the time of hearing this Court was apprised by the Deputy Superintendent of Police who is heading the present SIT that proceedings under Sections 82 and 83 Cr.P.C. pending against the co-accused who are evading arrest and if that is so, concerned Court is requested to expedite the same and if need be, recourse be also taken to Section 174 A IPC, at the earliest.

In view of the above, no ground is made out to grant concession of regular bail to the petitioner.

Dismissed.

A copy of this order be sent to the learned trial Court for compliance.

February 20, 2019
sanjay

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.