

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-36357-2019 (O&M)
Date of Order:03.10.2019

Munish Kumar

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate, with
Mr. Pratham Sethi, Advocate, for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab

Mr. J.K.Singla, Advocate, for
Mr. Manoj Kumar Pundir, Advocate,
for the complainant.

ANIL KSHETARPAL, J.

This is application No.3 filed by the petitioner under Section 439 of the Code of Criminal Procedure, 1973 for grant of concession of regular bail to the petitioner in cross case vide DDR No.40, dated 22.04.2016, registered under Sections 307/323/324/148/149 IPC, 1860 (Sections 302/325 and 201 IPC added later on) in FIR No.81, dated 21.04.2016 registered under Sections 307/323/324/447/511/148/149 IPC, at Police Station Dera Bassi, District SAS Nagar (Mohali).

Facts of the prosecution case as noticed by the Coordinate Bench while passing a detailed order are extracted as under:-

“The allegations against the petitioners levelled by Raman Kumar resident of village Samgoli, Tehsil Dera Bassi lodged before Sub Inspector Kuldeep Chand in brief were to the effect

that they were having ancestral land over which they had a dispute with Charan Singh and others and the civil litigation went up to the Hon'ble Apex Court. He alleged that on 21.04.2016 around 9.30 a.m. when the complainant Raman Kumar along with his younger paternal uncle (chacha) Megh Raj, father Mohinder Singh, elder paternal uncle (taya) Rajpal, brother Sandeep Kumar @ Pintu, Chaman Parkash @ Billa and Rinku were sitting in their fields, the present petitioners/accused side comprising of Gulab Singh, Charan Singh, Munish, Vijender (non-applicant), Abhay Partap, Tarun Partap, Bakhshish Singh, all armed with guns, along with Ajay Partap Singh, Paramjit Singh (non-applicant), Srivastava property dealer armed with Kirpans and Tillu @ Vishav Partap armed with Gandasi, Jasbir Singh armed with Kulhari, all co-villagers of the complainant side along with 60-70 other unidentified persons armed with Kirpans, Gandasis, Kulharis and Lathis, trespassed into their land with a harvest combine to harvest the standing wheat crop. It is alleged that Charan Singh accused petitioner gave a lalkara that today they will give them the entire land and thereafter from his gun Charan Singh gave a fire with an intention to kill which sneaked past left arm of the complainant at which Gulab Singh fired from his gun towards Megh Raj which sneaked near his ear while Vijender (non-applicant) and Tarun Partap gave fires towards Megh Raj hitting him on the upper and lower left arm as well as chest followed by fire of gun by Bakhshish Singh hitting Megh Raj on the stomach and Vijender Singh gave a fire on the right

leg of Megh Raj. It is further alleged that Ajay Partap who was armed with Kirpan hit a blow on the right side of head of Chaman Parkash with an intention to kill, whereas accused petitioner Tillu alias Vishav Partap gave a Gandasi blow on Sandeep Kumar who in order to save himself raised his right hand hitting right thumb. Abhay Partap gave a Gandasi blow on Sandeep Kumar whereas accused Paramjit Singh gave a blow on the right side of head of Rinku by means of Kirpan. The complainant has further stated that Bakhshish Singh again fired from his gun hitting right arm of complainant Raman Kumar. Jasbir Singh gave 2-3 Kulhari blows on the head of Mohinder Singh hitting on right side of his head, right eye and temple followed by a blow by accused Tillu @ Vishav Partap by means of Gandasi hitting Mohinder Singh on the head and thereafter the accused Srivastava gave a blow of his Kirpan hitting on the head of Rajpal followed by a fire by Tarun Partap by means of his gun hitting Rinku on the lower right arm and in this melee the complainant claims that their side was severely beaten up by the accused party and on hearing noise, people gathered and the accused ran away.

The initial version which is subject matter of FIR to this cross-version, by complainant Munish Kumar is that his family owns 40 acres of land in the area of village Samgoli which they cultivate and had sown wheat crop and out of which, wheat in 4 acres of land was yet to be harvested when on 21.04.2016 he along with son of his elder paternal uncle Bakhshish Singh namely Vajinder reached on their

tractor-trolley with combine machine to harvest their crop. Around 9.00 a.m. They started harvesting their crop and around 9.30 a.m. one Qualis car being driven by Raman in which 9-10 youths were sitting and 8-9 other youths on three motorcycles accompanying them reached their fields, who all were armed with Gandasis, Kirpans and Lathis and out of whom Billa, Raman, Mohinder Singh, Megh Raj, Rajpal, Pintu, Mahaveer, Rinku and Tinku along with 6-7 other unknown youths who were carrying Gandasis, Lathis and Kirpans raised lalkara that they be caught and finished off. The complainant alleged that in spite of their requests not to do so, the mob attacked them and seeing which, Gulab Singh father of the present complainant along with his younger paternal uncle Jasveer Singh, Charan Singh, their children Udey Partap Singh, Vishav Partap and Tarun Kumar rushed to rescue the complainant at which Billa accused who was armed with Gandasi, with an intention to kill gave a blow on the head of Munish Kumar hitting near the right ear on which he fell down and while he was lying, accused Raman gave a blow of his Gandasi towards his chest hitting on the right biceps. Accused Pintu gave two blows of Lathi and the complainant raised his hand to save himself hitting back of both of his hands. While others attacked the family of the complainant causing them grievous injuries and when they raised noise, people gathered and the accused ran away from the spot. Present complainant claims that they had sown wheat crop in the fields in question regarding which they had earlier lodged two criminal cases against

the other party.

In this occurrence, complainant Munish Kumar received 5 injuries, Gulab Singh 5 injuries, Jasveer Singh 4 injuries, Charan Singh 4 injuries, Vishav Partap Singh 5 injuries, Tarun Kumar 1 injury and Udey Partap Singh 3 injuries, leading to registration of case under Sections 302, 307, 325, 324, 323, 148, 149, 201 IPC. It is worthwhile to mention here that as per the stand of the two sides, accused Inderjit Singh @ Tinku has been found innocent whereas accused Mohinder Singh is reported to have died.”

Petitioner-Munish Kumar is in custody since 24.05.2016. Co-accused, namely, Tarun Kumar @ Tarun Partap, Gulab Singh and Charan Singh have already been granted concession of bail vide orders dated 21.05.2019 and 19.08.2019 (Annexure P-11 and P-12).

Question arises is whether this Court should entertain application no.3, once 2 previous applications have been dismissed by a Coordinate Bench.

It may be noted there that first application was filed by the petitioner for grant of bail along with various other co-accused. In fact, the Coordinate Bench was hearing certain applications for pre-arrest bail and regular bail of the petitioner along with certain co-accused. The Coordinate Bench dismissed the application on the ground that there is a history of inter-se dispute between two sides and there is every likelihood of endangering public peace and tranquility and there could be occasions for more bloodshed. This order was passed on 09.11.2017.

Second application filed by the petitioner came up for hearing along with application of another co-accused i.e. Udey Partap Singh. The

application was dismissed by the Coordinate Bench while making observations which are extracted as under :-

“Appreciating the submissions of the two sides, admittedly the two warring groups have come armed with fire-arms and other deadly weapons in large number and in this clash one person has died and a number of persons have received injuries. The mere contention so sought to be raised by the petitioners side that it is a case of version and cross-version, is subject to trial for the trial Court to conclude as to which of the parties was the aggressor. This Court vide detailed order dated 09.11.2017 has declined prayer of the petitioners for consideration of their bail holding that release of the petitioners on bail would endanger public peace and tranquility and may lead to more bloodshed and the witnesses being intimidated to obviate the trial.

Thus, it is apparent that bail application of Munish Kumar, petitioner was not considered on merits individually. It may be noted here that as per the version of first informant-Raman Kumar, which belongs to opposite side, Munish Kumar was armed with a 'Gun' and he came along with various other co-accused and trespassed into their land with a harvester combine to harvest the standing wheat crop. There is no allegation that the petitioner used his 'Gun' or had given any injury to the deceased or any other person injured. It is also established that Munish Kumar also suffered injuries, five in number, although the same were declared to be simple injuries.

In these circumstances, this court is of the considered view that prayer for bail of Munish Kumar, is required to be considered on merits.

Munish Kumar is in custody for over 3 years and 04 months. As noticed above, Munish kumar is not even attributed to have used the firearm in his hand or had caused any injury to anyone including the deceased. Further three co-accused as noted above have already been granted concession of regular bail. First order in this regard was passed in the month of May, 2019 and the second order was passed in the month of August, 2019. There is no allegation that thereafter there has been any disturbance in the public peace.

The conclusion of the trial of the case is likely to take time. Keeping in view the aforesaid facts, this court is of the considered view that petitioner-Munish Kumar deserves to be released on regular bail, at this stage.

Hence, petition allowed.

Petitioner-Munish Kumar be released on bail subject to furnishing adequate personal bail/surety bonds to the satisfaction of the concerned Chief Judicial Magistrate/Duty Magistrate.

3rd October, 2019
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No