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

Reserved on: June 02, 2020

CRM-M-3879 of 2020 (O&M)

Date of decision: June 9th, 2020

Sher Singh @ Shera

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

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

Mr. Pardeep Chahar, AAG Haryana.

MAHABIR SINGH SINDHU, J

Present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') for grant of bail pending trial to the petitioner, in FIR No.83 dated 28.06.2018, under Sections 120-B/148/149/302/307/323/427 of the Indian Penal Code, 1860 (for short 'IPC') and Section 25 of the Arms Act, 1959 (for short 'Arms Act') (Sections 506/201 of IPC and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act') added later on), registered at Police Station Kalka, District Panchkula.

The FIR case was registered at the instance of complainant Yog Raj @ Pinki son of Sucha Ram aged 28 years resident of Village Majra Mehtab, P.S. Kalka, with the allegations that on 28.06.2018, 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, Vikram @ Vicky (since deceased) resident of Ghatiwala, Pinjore and Mahinder @ Minder son of Lajja Ram, Village Majra Mehtab gathered at Paploha sand outlet for birthday celebration of Vikram @ Vicky. At about 4.30 PM six vehicles having about 30 young boys armed with sticks, swords, rods, guns etc. came from Kherawali side. He noticed that Umesh Kumar @ Matru, Akram resident of Panga Majri, Ishar Nagar, Pamma resident of Baddi armed with .12 bore gun each 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. Upon noticing firing, Vikram @ Vicky tried to hide himself on the rear seat of Scorpio No.HR49-C-9358, but Umesh Kumar @ Matru, Pamma Baddi and Akram fired indiscriminately 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 accomplices and on account of this Dalip @ Deepa suffered

a gunshot injury on his waist, Lakhwinder @ Happy suffered a gun shot injury on his arm, Mahinder @ Minder given sword blow, Harvinder @ Pola gun shot injury, Nirmal @ Happy suffered a rod blow. On hearing the firing, people started gathering there and all the assailants damaged one Alto Car (HR-49-C-7838) with their rods and while firing they ran away towards Kalka side in their respective vehicles. All the 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 & Sham Lal Tagra, and in order to take revenge, they had sent about 30 young boys of their gang to kill the complainant as well as others, on account of which Vikram @ Vicky died on the spot due to firing 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 for the petitioner contended that petitioner is in custody since 01.08.2018, after investigation in the matter, challan has already been presented; charges were framed on 29.10.2019 and now the case is pending for prosecution evidence. Further contended that out of total 67 prosecution witnesses, none has been examined till date. Also contended that petitioner is neither named in the FIR; nor any incriminating material was recovered from

him, during investigation, rather petitioner was nominated as an accused on the basis of disclosure made by co-accused, namely Bittu. Again argued that the Scorpio car which is alleged to be recovered from the petitioner during investigation, does not belong to him. Lastly contended that some of the co-accused with similar allegations have already been granted bail pending trial either by this Court or learned trial Court. Thus, petitioner also deserves the benefit of parity.

On the other hand, learned State counsel, on instructions from Sub Inspector Zile Singh, acknowledged the above factual position regarding custody of the petitioner, filing of challan, framing of charges as well as status of trial, but opposed the bail while submitting that one Scorpio car and mobile phone was duly recovered from the petitioner, during investigation. Further submitted that there are four other criminal cases pending against the petitioner in the State of Himachal Pradesh also, he is having a criminal background and moreover, petitioner has actively participated in the commission of the present crime. Lastly submitted that in case, the petitioner is granted the concession of bail pending trial, he is most likely to threaten the prosecution witnesses and hamper the smooth proceedings before learned trial Court.

Heard both sides and perused the paper-book.

As per allegations of the prosecution, deceased-Vikram @ Vicky died in this case in the occurrence on 28.06.2018 on account of suffering the gun-shot injuries. Investigation reveals that there were total thirty (30) assailants who came in six different vehicles, viz. two

Scorpio, one Verna, one Brezza, one Swift and one Alto armed with deadly weapons, i.e. guns, iron rods and *lathis* etc. in a broad-day light and attacked the victims indiscriminately. During investigation, Scorpio car No.HP-93-9898 was recovered at the instance of petitioner vide recovery memo dated 02.08.2018 along with registration certificate, which was used while committing the crime. Although, learned Senior counsel tried to argue that Scorpio car does not belong to the petitioner, but material collected during investigation including the statement of accused-Chaman @ Pamma and other co-accused, reveal that petitioner reached at the place of occurrence while driving the above said Scorpio car and some of the co-accused accompanied him.

Another argument on behalf of the petitioner that some of the co-accused have been granted concession of bail either by this Court or learned trial Court, is not helpful to the petitioner. Orders dated 05.03.2020, in CRM-M-8548-2020 (Sohan Lal versus State of Haryana) as well as dated 12.05.2020, in CRM-M-12142-2020 (Hem Raj and Pawan Kumar versus State of Haryana), while granting bail to the co-accused by the Coordinate Benches of this Court, nowhere reveal that any incriminating material was recovered from the above co-accused, during investigation; whereas, from the present petitioner, Scorpio car was recovered. Still further, it transpires that bail to another co-accused, namely Ganesh Kumar @ Gola was granted by learned trial Court vide order dated 14.05.2020 while relying upon the orders dated 05.03.2020 and 12.05.2020 (*supra*) on the ground of

parity, despite the fact that as per prosecution case, an iron rod was recovered from him, during investigation, therefore, this Court does not deem it appropriate to extend any benefit of this order to the petitioner, in any manner.

In view of the facts and circumstances discussed hereinabove, it is apparently clear that during investigation, sufficient material has been collected by the prosecution to connect the petitioner with commission of present crime which is very serious in nature, therefore, in the opinion of this Court, petitioner does not deserves the concession of bail. Consequently, this Court has no option except to dismiss the present petition.

Ordered accordingly.

The above observations may not be construed as an expression of opinion on the merits of the case.

(MAHABIR SINGH SINDHU)
JUDGE

June 9th, 2020

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No