

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

CRM-M No.11339 of 2020 (O&M)

Date of Decision: 15.07.2020

Vasim Khan @ Wasim Khan @ Monu

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Vinod S. Bhardwaj, Advocate for the petitioner.

Mr. Pradeep Chahar, Deputy Advocate General, Haryana
for the respondent/State.

MAHABIR SINGH SINDHU, J. (Oral)

Present second petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of bail pending trial to the petitioner in case bearing FIR No.83 dated 28.06.2018, under Sections 120- B, 148, 149, 302, 307, 323, 427, 506, 201 of the Indian Penal Code, 1860; Sections 25/30 of the Arms Act, 1959 and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Police Station Kalka, District Panchkula.

The aforesaid FIR was registered at the instance of complainant- Yog Raj @ Pinki son of Sucha Ram, resident of Village Majra Mehtab, Police Station Kalka, aged 28 years, with the allegations that on 28.06.2018, he along with his friends, namely, Satish @ T.T., resident of Village Majra; 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, resident of 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. Complainant noticed that 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 & swords and they started indiscriminate firing. Upon noticing firing, Vikram @ Vicky tried to hide himself on the rear seat of Scorpio bearing registration No.HR-49-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, resident of Kona; Sourav Jassu; Yashpal @ Yashu, resident of Tagra Hansua ran after them while firing along with other accomplices. 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 suffered sword blow,

Harvinder @ Pola suffered 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 the complainant and his friends. All 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.

Contentends that petitioner is in custody since 20.07.2018 and he was not named in the FIR. Also contends that during investigation, one mobile phone was recovered from the petitioner, but there is no material to substantiate that said phone was ever used by him for commission of the alleged offence. Further contends that with similar allegations, co-accused Vikas has already been granted the concession of bail pending trial by this Court in CRM-M No.11069 of 2020. It is also the contention that there is no other criminal case pending against the petitioner and

although, charges were framed on 08.10.2019, but till date, no prosecution witness has been examined.

The above factual position is duly acknowledged by learned State Counsel, on instructions from the police official concerned, but opposed the bail and submitted that petitioner is involved in heinous crime and, therefore, he does not deserve the concession of regular bail.

Heard both sides and perused the paper-book.

Concededly, petitioner is in custody for the last approximately two years and during investigation, one mobile phone has been recovered, but there is no material on record or in the affidavit dated 29.05.2020, filed by the Assistant Commissioner of Police, Kalka, District Panchkula that said mobile phone was used by him in the alleged occurrence in any manner. Since with similar allegations, co-accused Vikas has already been granted the concession of bail by this Court; there is no other criminal case pending against the petitioner and trial is likely to take sufficient long time in view of the prevailing circumstances, therefore, further incarceration of the petitioner would not serve any purpose.

In view of the above, this petition is allowed. Petitioner is ordered to be released on bail, in this case, on his furnishing adequate bail bonds and surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

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

It is clarified that petitioner shall fully cooperate with the proceedings before learned trial Court and in case, there is failure on his part, prosecution would be at liberty to move an appropriate application for recalling of this order.

July 15, 2020
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(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No