

201-5

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

Reserved on: June 02, 2020

CRM-M-12516 of 2020

Date of decision: June 9th, 2020

Bhupinder Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Bipan Ghai, Senior Advocate with
Mr. Paras Talwar, Advocate for the petitioner.

Mr. Pardeep Chahar, AAG Haryana.

Mr. Ganesh Sharma, Advocate for the complainant.

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 30.06.2018, 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 nothing incriminating was recovered from the petitioner. Learned Senior counsel again contended that petitioner is suffering from chronic Diabetes, thus, in view of the

clause 8.2 of circular dated 02.05.2020 issued by the Government of Punjab, Department of Jails, petitioner is entitled for concession of bail. 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.

The above factual position regarding custody of the petitioner, filing of challan, framing of charges, recovery as well as status of trial is duly acknowledged by the learned State counsel, on instructions from Sub Inspector Zile Singh, but he opposed the bail while submitting that petitioner is the main kingpin in the present case as he along with co-accused-Sham Lal operated the entire episode sitting in Goa, resulting into murder of a scheduled caste young boy and causing serious injuries to other victims. Also submitted that petitioner is neither a chronic patient of diabetes; nor circular dated 02.05.2020 issued by the Government of Punjab, Department of Jails, helpful to him, in any manner. 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.

Learned counsel for the complainant has also supported the arguments raised by learned State counsel, on similar lines.

Heard both sides and perused the paper-book.

As per allegations of the prosecution, deceased-Vikram @ Vicky was organizing his birthday party on 28.06.2018, then all of a sudden, thirty (30) assailants reached there in six different vehicles, viz.

two Scorpio, one Verna, one Brezza, one Swift and one Alto; duly armed with deadly weapons including guns, iron rods, *lathis* etc. and attacked the victims indiscriminately. As a result thereof, Vikram @ Vicky died on the spot and other suffered serious injuries. During investigation, sufficient material has been collected by the prosecution which indicate that petitioner along with co-accused Sham Lal were running a gang in the name of Bhupinder Singh Babbo (BSB gang) and petitioner is the master-mind for committing the murder of Vikram @ Vicky, a young scheduled caste boy. Facts of the present case reveal that petitioner is a very clever person as he along with co-accused-Sham Lal, well in advance, to claim the benefit of *alibi*, left for Goa and executed the crime on 28.06.2018 with the aid of thirty assailants. Investigation reveals that petitioner remained in constant touch through mobile No.9882260003 with Jasbir Singh on his mobile No.9988980003 as well as one Manga on mobile No.9729401001 and they exchanged 12 phone calls on the date of occurrence. There is sufficient material which indicate that the petitioner actively participated sitting in Goa. Charges under Sections 302, 120-B, 148, 149 as well as other ancillary offences of IPC, Section 25 of Arms Act and Section 3 of the SC/ST Act have already been framed against the petitioner and the case is pending for prosecution evidence, thus, the present case is of a very grave in nature. This Court is fully convinced with the argument of learned State counsel that in case, the petitioner is released on bail, he is most likely to hamper the trial.

The 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. 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 the benefit of this order to the petitioner, in any manner.

Another argument by learned Senior counsel that petitioner is a chronic diabetic patient and entitled bail in view of the circular dated 02.05.2020 is also liable to be rejected for the reasons; (i) that as per medical certificate dated 17.04.2020 (P-5) issued by the Medical Officer, District Jail, Kurukshetra, petitioner is suffering from Diabetes (High level sugar from eight days), anxiety and depression, therefore, he can't be termed as a chronic case of diabetes, (ii) circular dated 02.05.2020 is issued by the Government of Punjab, whereas, the present offence is committed in the State of Haryana, thus, can't be *ipso facto* applied to grant the benefit to the petitioner. Moreover, as per clause 8.2 of the above circular, all under-trial prisoners who are suffering from "chronic diseases" or pre-existing conditions and under treatment for the last one

year prior, are entitled to the benefit of the same, but subject to a rider stipulated therein that medical certificate issued by the Jail medical officer be further certified by SMO or CMO, however, in the present case, the certificate dated 17.04.2020 produced by the petitioner is neither verified by SMO; nor by CMO. Above all, this Court has already observed that the case of the petitioner is not falling within the category of “chronic diabetes”.

In view of the facts and circumstances discussed hereinabove, this Court has no option except to dismiss the present bail application.

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

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No