

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

**CRM-M No.13764 of 2020 (O&M)
Date of Decision: 08.09.2020**

Gyasi

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Ms. Mehak Sawhney, Advocate for
Mr. Vinod S. Bhardwaj, Advocate for the petitioner.

Mr. Pardeep Prakash Chahar, DAG, Haryana for the respondent.

Mr. Parveen Kaushik, Advocate for the complainant.

MAHABIR SINGH SINDHU, J. (Oral)

Second petition has been filed under Section 439 of the Code of Criminal Procedure for grant of bail pending trial to the petitioner in case FIR No.128 dated 23.04.2019, under Sections 148, 149, 341, 307, 302, 120-B of the Indian Penal Code, 1860 and Sections 25, 27 of the Arms Act, 1959, registered at Police Station Jhajjar, District Jhajjar.

As per prosecution case, in the year 2015, one Narender son of Jagbir was murdered, in which, maternal uncle-Jitender @ Pappu of the complainant-Shamsher is confined in jail. In that case, Padam and Vivek, both sons of above Jitender, were also implicated, but released on bail. Due to murder of Narender, a bad blood started between the sons of Jitender and family of Narender. On 23.04.2019, Padam along with his friends, namely, Ajay and Aman was travelling in his Car bearing registration No.DL-9CG-9679 OPTRA. At about 10:15 AM,

when they reached near the fields of Saroop and Kanwar Singh, the complainant party came across with Fortuner, Ritz, Santro and motorcycles occupied by Golu son of Hansraj; Anil son of Gyasi; Sonu son of Hansraj; Amit son of Saroop; Bintu son of Surajmal; Ganga Ram son of Deep Chand, Manje son of Ganga Ram; Sandeep son of Jagbir, Gaydu son of Surajmal; Hansraj son of Kanwar along with 4/5 other boys, armed with licensed weapons, waylaid their vehicles against the vehicle of Padam. Anil and Sandeep were armed with pistols, whereas Sonu was armed with *doga* pistol. All were armed with weapons and they immediately appeared by waving their weapons. Golu as well as Anil were monitoring the assailants and raised their voice for mitigating their grudge regarding the murder of Narender. Padam tried to sideline his vehicle, but it toppled off in the field. All accused started opening the fire. Padam, Aman and Ajay alighted from the vehicle and tried to flee away from the spot, but Golu immediately opened fire and chased them. He also opened fire upon Aman. Thereafter, Padam was cordoned off. Accused Sandeep, Golu, Anil, Amit as well as Bintu fired bullets upon Padam and he died on the spot. Assailants fired upon complainant also, but he escaped and fled away.

Contentends that petitioner is more than 70 years old and he was not named in the FIR; rather nominated as an accused on the basis of statement dated 25.04.2019 made by one Vivek during investigation. Also contends that petitioner is in custody since 27.04.2019 and after investigation in the matter, report under Section 173 Cr.P.C. has already been presented, but charges are yet to be framed. Further contends that during investigation, police failed to collect any material regarding the complicity of the petitioner and there is no other criminal case pending against him.

On the other hand, learned State Counsel acknowledged the factum of age of the petitioner, date of his arrest; not named in the FIR; filing of report under Section 173 Cr.P.C. and that no other criminal case is pending against him, but opposed the prayer on the ground that petitioner is the main conspirator in this case.

Similar plea has been raised by learned Counsel for the complainant as well.

Heard learned Counsel for the parties and perused the paper-book.

Concededly, petitioner was not named in the FIR, but nominated as an accused with the aid of Section 120-B, IPC on the basis of statement made by Vivek under Section 161 Cr.P.C. Investigation in the matter is already over as the challan was presented on 11.07.2019, but till date, charges have not been framed. Learned State Counsel is not able to show any material regarding the complicity of the petitioner except his disclosure and the statement of the witnesses under Section 161 Cr.P.C. Petitioner is 70 years of age; he is in custody since 27.04.2019 and there is no criminal antecedents coming forward. Since charges are yet to be framed, thus, trial is likely to take sufficient long time due to Covid-19 pandemic.

In view of the above, this Court is of the opinion that further incarceration of the petitioner would not serve any purpose.

Consequently, the present petition is allowed. Petitioner be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

Petitioner shall fully co-operate with the learned trial Court without seeking any unnecessary adjournments.

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

It is clarified that in case there is any misuse of concession on the part of the petitioner, State of Haryana as well as complainant would be at liberty to move an appropriate application for recalling of this order.

September 08, 2020
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

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