

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

CRM-M-14494-2020(O&M)

Date of decision: 01.09.2020

Vishav Partap @ Tillu

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. I.P.S.Kohli, Advocate,
for the petitioner.**

Mr. Amit Mehta, Sr. DAG, Punjab.

ANIL KSHETARPAL, J.

This is second petition filed under Section 439 of the Code of Criminal Procedure, 1973, for grant of bail pending trial in a criminal cross case arising from DDR No. 40 dated 23.04.2016, registered under section 307/ 323/ 324/ 148/ 149 IPC (section 302/ 325 and 201 IPC 1860 added later on), FIR No. 81 dated 21.04.2016, under section 307/ 323/ 324/ 447/ 511/ 148/ 149 IPC, at Police Station DeraBassi, District SAS Nagar, Mohali.

First petition for grant of regular bail filed by the petitioner was dismissed as withdrawn, at that stage, on 02.12.2019.

The facts of the prosecution case as noticed by a 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 Kuldip 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 (nonapplicant), 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.”

The petitioner also filed an application for grant of pre-arrest bail which was dismissed on 09.11.2017. The petitioner surrendered on 11.12.2017 and continues to be in custody since then.

Learned counsel for the petitioner has contended that the petitioner is in custody for more than 2 years and 8 months. He also contended that the deceased-Mahender Singh died on 23.05.2016 i.e after a period of more than one month from the date of alleged occurrence. He further submitted that as per the case of the prosecution, the petitioner was armed with a 'Gandasi' (Tomahawk) (a sharp edged weapon) and had given a blow on the head of late Sh. Mahender Singh. While referring to the post mortem examination report of late Sh. Mahender Singh, he has contended that the nature of weapon/force is blunt, whereas the petitioner is alleged to be armed with a sharp edged weapon. He further contended that undisputably there was a civil litigation between the parties.

On the other hand, learned State counsel has submitted that the petitioner is one of the main accused. He further submitted that the trial of the case has already commenced.

This court has considered the submissions of learned counsel for the parties.

As regard arguments of learned counsel based on the post mortem examination report, it is suffice to note that it would not be appropriate for this court, at this stage, to express any opinion. From the reading of the post mortem examination report, it is apparent that the deceased suffered 2 lacerated wounds on occipital and parietal region of the scalp. Apart from that the deceased also suffered c-shaped craniotomy scar on the right side of the scalp above the middle of the right eyebrow, he also suffered lacerated wound over right cheek near lateral aspect of the right eye.

However, as rightly contended by learned counsel for the petitioner, the petitioner is in custody for more than 2 years and 8 months. As per the custody certificate, only a civil suit is pending against the petitioner. The custody certificate does not show that there is any criminal case pending against the petitioner. As per the information of learned counsel for the parties, only 5 prosecution witnesses have been examined out of total 31 proposed to be examined by the prosecution.

Further, co-accused Tarun Kumar @ Tarun Partap, Gulab, Charan Singh and Manish Kumar have already been granted concession of bail.

Still further, due to spread of the Novel corona virus and restricted functioning of the courts on account thereof, conclusion of the trial is likely to take time.

Keeping in view the aforesaid facts, the present petition is allowed. The petitioner is directed to be released on regular bail on furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, SAS Nagar, Mohali.

01st September, 2020
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No