

210

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.18535 of 2020 (O&M)

Decided on: 07.12.2020

Naresh @ Buntty

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Ms. Mehak Sawhney, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.83 dated 28.06.2018, for offence punishable under Sections 148, 149, 302, 307, 323, 427, 506, 201, 120-B of the Indian Penal Code, 1860 (in short 'IPC'), 25, 30 of the Arms Act, 1959 and 3 of the SC/ST Act, 1989, registered at Police Station Kalka, District Panchkula.

Counsel for the petitioner has relied upon the order dated 05.03.2020 passed in CRM-M No.8548 of 2020, vide which one of the co-accused namely Sohan Lal was granted the concession of regular bail considering the fact that his name surfaced in the FIR on the basis of the disclosure statement of co-accused Hemraj, Pawan @ Pappi and Pawan @ Billa. It is further submitted that even these 03 persons i.e. Hemraj and others, have been granted the concession of regular bail vide order dated 12.05.2020 passed in CRM-M No.12142 of 2020.

CASE HEARD THROUGH VIDEO CONFERENCING

The facts are extracted from the order dated 05.03.2020,
which reads as under:-

“Learned counsel for the petitioner submits that as per allegations in the FIR, registered at the instance of Yograj @ Pinki, on 28.06.2018, he along with his friends, as named in the FIR, had gone to celebrate the birthday of Vikram @ Vicky Chemy near Village Paploha. At about 4.30 in the evening, six cars, having 30 young boys, holding swords, sticks and rods, came there and started fired indiscriminately. The complainant saw Umesh Kumar @ Matru, Akram, Pama, who were having 12 bore gun, Gurmeet @ Rhoda, Madan @ Madu, Satta, Makhan, Rinku, Gola, Deepu Kaimbwala, Saurav Jassu and Billa were holding pistols and swords and they started firing. Vikram @ Vicky Chemy hide himself at back seat of white Scropio and Umesh Kumar @ Matru, Pamma Baddi and Akram started firing, due to which he died at the spot. The complainant and others, in order to save their lives, started running and they were chased by Makhan Sukhomajri, Madan @ Maddu, Gurmeet @ Rhoda Sukhomajri, Gola, Rinku, Billa, Satta Manakpur, Deepu, Ram Gopal @ Palo, Saurav Jassu and Yashpal @ Yashu and some other persons. The assailants were firing and in that process, Dalip @ Deepa got injuries near his waist, Lakhwinder @ Happy got injuries on arm, Mahinder @ Minder got a sword blow, Harwinder @ Pola got a gunshot injury and Nirmal @ Happy got a rod blow. The assailants also damaged their car standing there with the swords and rods and ran away towards Kalka. It is further stated that the assailants, on asking of Bhupender Singh @ Babbu and Shamlal Tagra, had come to kill the complainant and his friends, because earlier they had a fight with Bhupender Singh @ Babbu and Shamlal Tagra, wherein Shamlal Tagra suffered injuries and they were having grudge against us.

Learned counsel for the petitioner further submits that the petitioner was not named in the FIR and there is a specific motive attributed in the FIR towards co-accused and some of the co-accused have been specifically named, who have caused firearm injuries to Vikram @ Vicky Chemy, who died on the spot. It is further submitted that even the accused persons are specifically named in the FIR, who caused injuries to the injured/eyewitnesses and

CASE HEARD THROUGH VIDEO CONFERENCING

were trying to run away from the spot and only evidence against the petitioner is the disclosure statements of Hem Raj, Pawan @ Pappi and Pawan @ Billa that he was part of the conspiracy and was in touch with Pawan @ Billa on his mobile phone and had gone to the place, where the conspiracy was hatched. It is thus submitted that only allegation against the petitioner is of conspiracy and there is no direct allegation against him, of causing any injury to any person, as he was not even named in the FIR.”

Counsel for the petitioner has also referred to the FIR to argue that the petitioner was not named in the FIR and as per the affidavit of the Assistant Commissioner of Police, Kalka, the evidence which has come against the petitioner is that one mobile phone bearing No.9882050031, was recovered from the petitioner and its location was found near the place of occurred. It is further submitted that he has also been nominated in the FIR on the basis of the disclosure statement of the co-accused Chaman, Hemraj, Pawan and Sohan Lal.

Counsel for the petitioner has further argued that except the said evidence, which is to be proved during the course of trial, there is no motive attributed to the petitioner.

Counsel for the petitioner has also referred to some other orders vide which the other accused have been granted the concession of bail by this Court and one of accused namely Paras Rana, has been granted the concession of regular bail by the Hon'ble Supreme Court vide order dated 18.09.2020 passed in SLP (Crl.) No.3103 of 2020.

Counsel for the State, on the basis of the affidavit of the Assistant Commissioner of Police, Kalka, has not disputed the factual position but opposed the prayer for bail.

Counsel for the State has also argued that out of 61 prosecution witnesses, none has been examined so far as number of

CASE HEARD THROUGH VIDEO CONFERENCING

accused have been cited and the petitioner is in custody since 27.08.2018.

After hearing the counsel for the parties, without commenting anything on merits of the case and considering the fact that the co-accused of the petitioner have already been granted the concession of regular bail; challan stands presented; charges have been framed; the petitioner is in custody for more than 02 years and 03 months; he was not named in the FIR; no motive is attributed against the petitioner; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time due to COVID-19 situation, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

07.12.2020

yakub

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No