

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-34293-2020 (O&M)

Date of Decision:-17.8.2021

Digvijay @ Hanni

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Keshav Pratap Singh, Advocate for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana,
assisted by ASI Ash Mohd.

Mr. S.K. Panwar, Advocate for the complainant.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.(Oral)

1. The petitioner seeks grant of regular bail in a case registered vide FIR No.106 dated 19.5.2020 at Police Station Hassanpur, District Palwal under Sections 148, 149, 323, 341, 427, 307, 379-B, 506 of Indian Penal Code and Section 25 of Arms Act.
2. The FIR in question was lodged at the instance of Dharmendra (father of injured), wherein it is alleged that on the night intervening 16-17.5.2020 the injured Neeraj informed his father about having been assaulted. The

complainant alleged that when his son was returning back home in his car, then he was waylaid by the accused who came in a Scorpio vehicle and in Nissan Terrano vehicle. It is alleged that Umesh was driving Nissan Terrano vehicle bearing registration No.HR-30-S-9790. About 10-12 persons were sitting in both the vehicles, which included Bhupendra, Charanbir @ Mittu, Digvijay @ Hanni (petitioner), Vishal, Rahul, Prem Singh @ Pepsi, Gulshan, Vikas, Umesh, Tinkal and Phool. It is alleged that Bhupendra and Mittu raised a '*lalkara*' exhorted their companions to kill the complainant's son. Thereafter Umesh damaged the victim's vehicle with a hammer and the victim was dragged out of the car. Bhupendra is alleged to have given blows to the victim with a stick. Mittu hit the victim with a '*saria*' (iron rod). Umesh is stated to have given a blow with hammer on injured's ankle. Tinkle gave a blow with '*saria*' on the elbow of the victim, while Gulshan gave a blow with hammer on his wrist. It is further alleged that the petitioner Digvijay @ Hanni fired at the victim with an intention to kill him hitting him on his thigh. Vishal is also stated to have fired from his country made pistol, which also hit lower part of victim's thigh. Rahul and Prem are alleged to have given blow with '*saria*' and hammer. Phool is alleged to have given stick blows. Upon a ruckus having been raised, some villagers were attracted to the spot and upon seeing them the accused ran away from the spot.

3. Learned counsel for the petitioner submits that although the petitioner, as per FIR, is alleged to have fired at victim Neeraj i.e. at the son of complainant, but when the statement of the victim Neeraj was recorded in terms of Section 161 Cr.P.C. he has nowhere alleged that the petitioner had fired with any firearm and has attributed a blow on his foot to the petitioner with the help of

a stick. Learned counsel, in this regard, has referred to the said statement, which is annexed as Annexure P-2.

4. Learned counsel for the petitioner has next drawn the attention of this Court to the MLR of the victim/injured Neeraj annexed as Annexure P-3, a perusal of which would show that the injured Neeraj sustained as many as 7 injuries. However, none of the said injuries can be said to be on any vital part and all the injuries are either on the legs or arms of the injured. Learned counsel further submits that although a swab was taken from the wound in respect of injury No.4 and sent for ballistic examination to assess as to whether there was any residue of gun powder, but as per the report of ballistic expert, no such trace of gun powder was found. It has thus been submitted that the petitioner at best can be said to have caused a simple injury and, as such, deserves the concession of bail particularly when he has already been behind bars for a substantial period of 11 months.
5. Opposing the petition, learned State counsel has submitted that since the complainant has categorically stated that the petitioner was carrying a weapon i.e. a firearm, then the mere fact that ballistic report does not reflect presence of any gun powder cannot totally bely the case of prosecution. Learned counsel has further submitted that, in any case, the petitioner has earlier been involved in 3 other cases. Learned State counsel has, however, informed that the petitioner as on date has been behind bars for the last about 11 months and that challan already stands presented.
6. At this stage, learned counsel for the petitioner has clarified that infact the petitioner stands acquitted in all other cases and the instant case is the only case pending against him.

7. I have considered rival submissions addressed before this Court.
8. Having regard to the facts and circumstances of the case and while noticing that the FIR came to be lodged at the instance of father of the injured, who admittedly himself is not the eye-witness and when the statement of the injured Neeraj came to be recorded, he has merely attributed a blow with stick on his foot to the instant petitioner, it would certainly be debatable as to whether the petitioner can be held liable for having committed any offence under Section 307 IPC. In any case, since the petitioner has been behind bars for a substantial period of 11 months and challan already stands presented, further detention of the petitioner will not serve any useful purpose. The petition, as such, is accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned Trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

17.8.2021

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No