

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

CRM-M-40732-2021 (O&M)

(1) Vikas @ Vivek ...Petitioner

Versus

State of Haryana ...Respondent

(2) **CRM-M-1571-2022 (O&M)**

Shamsher ...Petitioner

Versus

State of Haryana ...Respondent

Date of Decision:- 11.3.2022

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. A.P.S.Sandhu, Advocate for the petitioner
in CRM-M-40732-2021. .

Mr. Dalbir Singh, Advocate for the petitioner
in CRM-M-1571-2022. .

Mr. Rajiv Sidhu, DAG, Haryana.

GURVINDER SINGH GILL, J.

1. This order shall dispose off the above mentioned two petitions filed on behalf of Vikas @ Vivek and Shamsher seeking grant of regular bail in a case registered against them vide FIR No. 107 dated 27.2.2021 under Section 25 of the Arms Act and under Sections 302, 307, 34, 452 IPC (Section 120-B IPC added lateron) at Police Station Meham, District Rohtak.

2. The FIR in question was lodged at the instance of Sumit wherein it is alleged that on 27.2.2021, he alongwith his friends Ankit, Vikas, Amit and Ankush were present in a room on the top floor of their house and were talking to each other. It is alleged that at about 1:30 – 2 p.m., 4 persons came in a white coloured car near the house and after alighting from the same came to the room where the complainant and others were present and fired indiscriminately upon them with an intention to kill them. The complainant was hit on his right hand and on his legs. Ankit, Ankush and Vikas were also hit on account of firearm shots, having been fired. Amit, however, escaped narrowly and was not hit. The complainant stated therein that he identified two of the assailants as Kapil son of Vijender and Sanjit @ Dheela son of Shamsher of Nindana village. The accused, thereafter, ran away from the spot. The injured were taken to hospital at Meham from where they were referred to PGIMS Rohtak. Ankush and Vikas, however, succumbed to their injuries. The complainant has alleged that the motive for firing on them was that he as well as his friend Ankit had an old enmity with Kapil, who while conspiring with co-accused had fired at them.
3. The learned counsel for the petitioners submitted that none of them is named in the FIR and that they have falsely been nominated as accused on the basis of a statement of injured Ankit recorded under Section 161 Cr.P.C. to the effect that Vijender, Shamsher, Sunil @ Sukha, Suraj and Vikas son of Rajpal had been following them and had been keeping a vigil on them for the purpose of conducting *recce* which led to attack on the complainant and others. The learned counsel has submitted that even if the said statement is accepted to be correct, still it surfaces that the petitioners were never present

at the spot and had not participated in the act of firing on the complainant and others. It has been submitted that it will be debatable as to whether the *recce* had been conducted by the petitioners so as to facilitate the commission of crime or for some other purpose.

4. Opposing the petitions, the learned State counsel has submitted that since the petitioners had played an important role in conducting *recce* so as to facilitate the commission of crime by co-accused, therefore, their complicity is clearly evident and as such, they do not deserve the concession of bail. The learned State counsel has informed that apart from the statement of injured Ankit recorded under Section 161 Cr.P.C., the accused Amit, in his disclosure statement, has also stated about the petitioners, having conspired with the co-accused. The learned State counsel has informed that both the petitioners have been behind bars since the last more than 1 year and that while there is one more FIR lodged against Vikas @ Vivek, the petitioner Shamsher, who is aged 67 years, is not involved in any other case. It has also been informed that as on date no prosecution witness out of the cited 41 prosecution witnesses has been examined.
5. I have considered rival submissions addressed before this Court.
6. Admittedly, the petitioners were not amongst the 4 assailants, who had fired at the complainant and others. The evidence collected against the petitioners is mainly in the shape of a statement of Ankit recorded in terms of Section 161 Cr.P.C. wherein he has stated that the petitioners alongwith 3 others had been conducting *recce* near the place of occurrence and had been keeping a vigil upon the complainant and others. The veracity of the said statement

would be debatable. The petitioners, in any case, have been behind bars for a substantial period of about 1 year. Conclusion of trial is likely to consume time inasmuch as not even a single prosecution witness out of the cited 41 prosecution witnesses has been examined till date. The petitioners are not found to be habitual offenders. Infact, the petitioner Shamsheer is not involved in any other case. In these circumstances, further detention of the petitioners will not serve any useful purpose.

7. The petitions, as such, are accepted and the petitioners are ordered to be released on regular bail on their furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.
8. A photocopy of this order be placed on the file of connected case(s).

11.3.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No