

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

CRM-M-46595-2021

Date of Decision: February 23, 2023

Vinay Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CRWP-10727-2020 (O&M)

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...Petitioner

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CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Amit Sharma, Advocate for the petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

DEEPAK GUPTA, J.(Oral)

In CRM-M-46595-2021 under Section 438 Cr.P.C., prayer is made for grant of anticipatory bail to the petitioner in case FIR No.13, dated 30.01.2019, registered at Police Station Sector 20, Panchkula, under Sections 394, 395, 396, 397, 302, 120-B and 216 IPC, besides Section 25 of the Arms Act, 1959; whereas in the connected case bearing CRWP No.10727-2020, prayer is made to set aside the order dated 24.09.2020 (Annexure P-8) and to ensure the life and liberty of the petitioner from the hands of respondent No.4-In-charge, Crime Branch, Panchkula Police.

2. FIR in question was registered on the complaint of Vinod Kumar S/o Pawan Kumar, resident of Sector 20, Panchkula, as per which on 30.01.2019 at about 5-5.30 p.m., he along with 10-12 friends was playing cards in the showroom, then 8-10 youths entered the showroom, all carrying weapons. 2-3 of them opened fire at them and scared them by brandishing their pistols and asked them to hand over whatever cash

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or gold they had. Upon resistance by 2-3 of the complainant's companions, they were given beatings with the help of helmets. 2-3 of the accused also fired shot at them. Accused took away all their cash, mobile phones, gold ornaments and fled away while firing upon them. It is alleged further that one of the gun shots hit Sunny, who ultimately succumbed to the injuries.

3. Investigation was carried out, during which one Rohit, arrested in case FIR No.95 of 2019 registered at Police Station Badapur under Sections 302 and 307 IPC, suffered disclosure statement before police of Police Station Badapur, District Bijnour (U.P.) to the effect that he along with Naveen, Hemant @ Lala, Vineet @ Vicky, Mohit and Sunil Kumar @ Rana made the plan, as per which dacoity was committed in the showroom of Sector 20, Panchkula by Kuldeep, Mohit and other boys, who had come from Delhi, in which one person had died. Hemant Kansal @ Lala was arrested on 23.05.2019 and recovery of ₹10,000/- and two mobile phones used in the plan were recovered from him. During course of investigation, Naveen, Sunil Kumar @ Rana, Jitender @ Jony, Rajpal @ Jagpreet, Irfan and Altaf Khan were arrested from time to time and recovery of the part looted articles were effected from them, besides the vehicles used in the crime. During test identification parade conducted in the presence of learned Area Magistrate, complainant identified accused Irfan @ Katu, Jitender @ Jony, Altaf Khan @ Sanju and Rajpal @ Jaspreet Singh @ Jassi on 10.06.2019.

4. As per prosecution allegations, during their respective interrogations, accused Jitender @ Jony, Rajpal @ Jaspreet, Irfan, Altaf Khan and Kuldeep @ Bawa disclosed that Vinay Kumar (petitioner) had

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accompanied them in the incident and had fired shot with his pistol on the crowd, which was shoot in the head of one boy. Raids were conducted to nab the petitioner but failed.

5. It is contended by the petitioner that he is posted as Cleaning Inspector with the Eastern Municipal Nagar Council, Delhi since 2012. Petitioner is being falsely implicated as due to his job profile, he is not in good books of a group indulging in illegal activities. In the first week of September, 2019, an officer from Crime Branch, Panchkula visited the house of the petitioner disclosing that petitioner was wanted in FIR No.13 dated 30.01.2019. Family members apprised the police that petitioner was on official duty on the date of occurrence and had been in Delhi at that time and had never visited Panchkula. Petitioner further submits that he has no relationship with the arrested accused Vipin, Jitender @ Jony, Kuldeep @ Bawa and two others, rather they had threatened the petitioner for false implication. Petitioner had even reported one of the incident of assault to the police vide Annexure P-5. Earlier, petitioner had filed CRWP No.2602 of 2020 seeking protection of life and liberty at the hands of the respondents and direction was given to decide his representation in expeditious manner. Due to outbreak of COVID-19 pandemic, he could not join the inquiry but his uncle along with others met the police but they were threatened to produce the petitioner. The representation was rejected without passing any speaking order. It is contended further that petitioner is being roped in on the basis of disclosure statement of co-accused, which has no evidentiary value. It is also contended that as per final report submitted by the police under Section 173 Cr.P.C., petitioner participated in the crime but he is not

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shown on the scene of crime, as per CCTV footage collected by the Investigating Agency. Plea of *alibi* is required to be proved during trial but at this stage, petitioner is relying upon the attendance register maintained in his office as he is holding a public post. It is also submitted by the petitioner that he had not filed any such or similar petition before this Court or before the Sessions Court.

6. As stated by the petitioner himself that he had earlier filed CRWP No.2602 of 2020, seeking protection of his life and liberty in which order was passed to decide his representation. After the decision of the representation, petitioner filed CRWP No.10727 of 2020, challenging the inquiry report dated 24.09.2020.

7. In reply by way of affidavit dated 13.12.2022 of Shri Kishori Lal, HPS, Assistant Commissioner of Police, Panchkula on behalf of the respondents, it is submitted that in the disclosure statements of as many as five accused, namely Jitender Kumar @ Jony, Rajpal Singh @ Jaspreet Singh @ Jassi, Irfan, Altaf Khan and Kuldeep Singh @ Bawa, the name of the petitioner emerged to have been participated in the crime and to have fired shot in the head of a boy, which resulted into death of Sunny. Challan against co-accused have already been submitted. It is further submitted that pursuant to the direction of the Court given in CRWP No.2602 of 2020, petitioner was called many times to join the inquiry, but he failed to do so, rather his two uncles and two advocates appeared but did not produce any clear proof regarding the innocence of the petitioner. CCTV footage of the incident were shown to them, but they denied identification of the petitioner. Allegations made in the representation by the petitioner were found to be false and so by way of

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speaking order dated 10.09.2020, the representation was rejected. Repeated raids were conducted to arrest the petitioner but he evaded the same. It is submitted further that apart from the appointment letter, presence register of the petitioner was obtained from the Sanitary Inspector of the Municipal Corporation, where the petitioner is appointed as a Cleaner Employee. It was disclosed by the Sanitary Inspector that though as per routine, duty of the petitioner is marked from 7 am to 3 p.m. in the form of "P", but it is a matter of investigation as to whether it was marked by the petitioner or somebody else. It was also stated by him that employees like petitioner when do not report for duty from the zone and get late, they make the report direct on the next day. Police report further reveals that during the course of investigation, customer application form and call details records of the mobile phones of the petitioner were collected and it was found that a new sim was activated on 01.02.2019 i.e. two days after the occurrence and he has been in regular touch with accused Jitender @ Jony and Irfan.

8. Contention of the petitioner that disclosure statement of co-accused have no value, is devoid of any merit at this stage, as petitioner has yet not joined the investigation. As many as five co-accused have suffered disclosure statement, as per which petitioner was accompanying them at the time of committing crime and had fired shot in the head of a boy. The call details record show the petitioner to be in touch with two of the co-accused. He was asked to join the inquiry by this Court in CRWP No.2602 of 2020, but on the pretext of Corona, he failed to join the inquiry, though his uncle & others appeared. The plea of *alibi* set up by the petitioner cannot be considered at this stage, as it is to be proved in

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defence by the petitioner during trial. Allegations against the petitioner are quite serious in nature and the same cannot be described as unfounded, having regard to the evidence collected by the Investigating Agency so far. Petitioner also contends that he had earlier made a complaint against co-accused Jitender @ Jony, due to which he has been falsely implicated but that complaint Annexure P-5 is to be proved and besides, there is no complaint against four co-accused, who have also suffered disclosure statements.

9. Learned counsel for the petitioner has also taken the plea that co-accused Naveen, Kuldeep @ Bawa, Mohit and Rohit have already been allowed regular bail by this Court and so petitioner deserves to be given the benefit of anticipatory bail. There is no merit in the contention. Co-accused Naveen, Kuldeep @ Bawa and Mohit were granted regular bail vide order dated 08.07.2022 in CRM-M-23658-2020, CRM-M-23859-2022 and CRM-M-25604-2022 respectively after observing that none of them was alleged to be present at the spot and they had been nominated on the allegations that they had conspired with the remaining accused. The allegations against above said Naveen Kumar and Mohit were either conducting reiki of the place of occurrence or by supplying arms to them. It is for these reasons they were granted regular bail. Similarly, the role of co-accused Rohit, who was allowed bail on 28.03.2022 in CRM-M-21051-2021 (O&M) was that he was part of plan to commit the crime with his companions and had conducted reiki of the place of occurrence but was not present at the spot. The case of the petitioner cannot be equated to the said co-accused, as the specific role which has come during investigation against the petitioner is that he was

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present at the spot along with others and had even shoot from his pistol resulting into the death of one Sunny.

10. Having regard to the entire discussion as above, I find no merit in CRM-M-46595 of 2021. As such, the same is hereby dismissed.

11. As far as CRWP No.10727 of 2020 is concerned, the only direction given by the Court was to decide the representation of the petitioner. As is evident from the reply of the respondents, petitioner was asked to join the inquiry but he failed to do so. His family members appeared but did not produce any cogent proof regarding the plea of *alibi* put forth by the petitioner and so, representation was rejected. There is nothing at this stage to disbelieve the report, as petitioner himself failed to join the inquiry. As such, CRWP No.10727 of 2020 is also dismissed.

Photocopy of this order be placed on the connected case file.

February 23, 2023
sarita

(DEEPAK GUPTA)
JUDGE

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