

qualification certificate in the election. In regard to fake qualification certificate of Nisha, my cousin Utkarsh moved applications under RTI Act to DC Office and CM Window portal. Regarding which, Nisha was called to DC Office on 27.9.2023 to put forward her side, where Utkarsh was also called. Outside Mini Sectariate, in the parking area, the accused Nisha Sarpanch, Hemraj husband of Sarpanch, Hitesh son of Sumer, Vishal son of Jiley extended threat to Utkarsh to take back his RTI application, in case of otherwise, he and his family were threatened to bear the brunt. Yesterday on 4.10.2023 at about 9:40/10:00 P.M, all of the accused with a common objective, equipped with illegal weapons, LATHI, DANDA, rods, axes and spades, came in a Scorpio car no. HR 30W 6404 and two motorcycles and with an intention to kill, opened a deadly attack at house of my uncle Deshraj, where my uncle Sumer was already present. Scorpio was being driven by Hemraj and Yashpal Fauji was sitting on his side seat. Soon on alighting from Scorpio car, the accused started abusing us. On hearing the abusings, I, my uncle Sumer, my brother Aman, my aunt Gulbiri and other family members had come out and at that time, the accused Hemraj and Yashpal exhorted sitting in Scorpio car stating that we be killed and none be spared. Upon which, the accused Vishal, with an intention to kill fired at me from an illegal weapon, which hit at rea of my right thigh while I was running back to save myself. The accused Hitesh and Pratyek also fired at my aunt with illegal weapons, the shot hit at rear of her right thigh and one shot hit at rear of my thigh. The accused Vishal scaled up gate of the house and fired on right side of stomach and waist of my uncle Sumer. Nikhil caused a rod blow on his temple. The accused Suraj, Pradeep, Saurabh@Leele, Sandeep, Jail, Nepal, Satish also fired at our house with an intention to kill. The accused Manish, Krishan, Suraj, Saurabh@Leele unanimously said that it is the result of locking horns with Mahender Sarpanch and his men. After committing the crime, the accused had fled from there firing and brandishing their weapons. Thereafter my family members had shifted my aunt to Govt. Hosptial, whereas, I and my uncle Sumer were shifted to Sarvodya Hospital, where my uncle had died of fire injury. I am hospitalized at Sarvodya Hospital. My aunt has also been admitted to Sarvodya Hospital on being referred from Govt. Hospital. The above said accused has caused the crime under a conspiracy as Mahender Ex Sarpanch and his men had killed my father Bharat Singh in the year 2016 and our companion Digamber@Diggall was killed in 2021. In regard to murder of Digamber@Diggall FIR no. 75/2021, under section 302 of IPC, P.S Bahin stands registered and the same is pending before the Learned Court. The accused Hemraj, Satisl, Nepal, Leele, Manish, Vishal, Hitesh, Yashpal, Krishan and Mohit all go to Mahender Sarpanch to meet him at Bulandshahar Jail, Uttar Pradesh. They in connivance and under a conspiracy with him, have killed my uncle Sumer. Then a request to take legal action against the accused persons was made".

4. The petitioner's counsel argued extensively and touched many arguments, all of which are also mentioned in the bail petition, from para 7 to 19, which read as follows:

"7. That it is the case of prosecution that the petitioner was arrested on 05.10.2023 along with Sandeep Singh, Krishan and Manish. Thereafter, the disclosure statements were manipulated by the investigating agency on 06.10.2023, but nothing was recovered pursuant to the said disclosure statements. Thereafter, the investigating agency again introduced improved disclosure statements on 08.10.2023, wherein, they changed their versions. The case set up against the petitioner in the first disclosure was that he had hid a Scorpio vehicle at the house of his friend at Manesar. But, it was changed to the fact that the said vehicle had been taken away by Vishal co-accused and only Vishal knew about the vehicle. Therefore, nothing was recovered at the instance of the petitioner although the Scorpio vehicle also did not connect the petitioner with the crime.

8. That the investigating agency recorded supplementary statement of Amit on 07.10.2023, wherein he tried to change the prosecution case and falsely implicate some of the accused while specifying and changing the part attributed them. This belated statement has apparently been introduced, so as to make the ocular version in confirmation with the medical evidence. The copy of supplementary statement of Amit dated 07.10.2023 is attached herewith as Annexure P-9.

9. That the investigating agency also recorded statement of Gulbiri injured on 17.10.2023 ie. after 13 days of the occurrence. As already submitted, said Gulbiri was conscious and had a minor injury. Still the investigating agency chose not to take her version apparently because she must not be toeing the version of the prosecution. Even the statement made by her on 17.10.2023 also does not further the case of prosecution against the petitioner which makes his false implication in the present case apparent on record. The copy statement of Gulbiri dated 17.10.2023 is attached herewith as Annexure P-10.

10. That thereafter the other accused were arrested on different dates and it is alleged that Partyek and Hitesh got recovered 315 bore country made pistol each. Some of the other accused are said to have got recovered different weapons like danda etc. Vishal is said to have been taken on production warrants on 13.12.2023 and he is thereafter said to have got recovered Scorpio vehicle.

11. That the petitioner and his wife Nisha have apparently been arrayed as accused at the instance of complainant party because they had motive to falsely implicate the petitioner. It is alleged by the complainant that Pinki his sister in law had contested election of Sarpanch against Nisha wife of petitioner and the election was won by Nisha. Therefore, they had every reason to falsely implicate the petitioner and his wife out of wreak vengeance and political ill will.

12. That it is further alleged by the complainant that Utkarsh his cousin had filed an RTI regarding academic qualification of Nisha and therefore he was threatened by Nisha, petitioner, Hitesh and Vishal to withdraw the RTI on 27.09.2023. But this in spite of this threat there was neither any complaint lodged by the Utkarsh nor any Panchayat or higher police officials were

informed. Therefore, the complainant party has apparently introduce this story to show motive qua the petitioner. This fact is also belied by the investigation conducted by the investigating agency as Nisha wife of petitioner was found innocent by them. Hence, the motive being propounded by the prosecution is not proved.

13. That the complainant party has tried to cast the net wider and implicate everyone against whom they had any type of ill-will. It has been alleged in the FIR that the present occurrence had been committed by Vishal, Nisha, Hemraj petitioner in connivance with each other as Mahender and his persons had murdered his father Surat Singh in 2016 and Digamber in the year 2021. It was further alleged that petitioner, Satish, Nepal, Leele, Manish, Vishal, Hitesh, Yashpal, Krishan and Mohit all use to meet Mahender Sarpanch in Jail and they had committed the murder at his instance. Therefore, the complainant by giving a belated version has tried to implicate Mahender and his relatives also by alleging an old motive of murder. This story is apparently false on the face of it as the complainant party has tried to show two different motives qua two different set of accused, but by alleging that they had conspired with each other.

14. That the entire case of prosecution also becomes doubtful by the fact that the investigating agency found Sandeep Kumar, Manish, Yashpal Fauji, Suraj, Leela @ Saurabh and Nisha as innocent and not involved in the present occurrence. The prosecution even moved application under 169 Cr.P.C. for discharge of Sandeep and Manish who were released by the Ld. Court after that. Therefore, the story of the prosecution qua the motive and the presence of these accused has been disbelieved.

15. That as per the allegation the petitioner is said to be present at the place of occurrence, but that is belied by the CCTV footage of the house of the petitioner obtained by the investigating officer during investigation. It has come in the CCTV footage that the petitioner along with his wife Nisha and their gun man provided by the Palwal Police were present at their own house at the time of alleged occurrence. It was on the basis of this that Nisha wife of the petitioner was declared innocent by the investigating agency. It was found that Nisha at her house and not at the place of occurrence at the relevant time. Therefore, the false implication of the petitioner is apparent on record.

16. That the Ld. Trial Court while rejecting the above said argument held that the CCTV footage of the house of the petitioner was not part of challan, but then also observed that the police zimni find reference to the CCTV footage on the basis of which it was concluded that Nisha was not involved in the incident. However, the Ld. Trial Court dismissed the bail application of the petitioner by alleging that the petitioner was also alleged to have conspired with co-accused Mahender Singh who was a convict in murder case of father of the complainant. It may be pointed out that the case of the prosecution is about the presence of the petitioner at the spot. Once, this allegation is belied by the evidence on record reliance cannot be placed upon such witnesses about the petitioner conspiring with Mahender Singh co-accused particularly when there is no

evidence of petitioner having ever met said Mahender. There is no reason for the petitioner to connive with said Mahender Singh rather the complainant party has tried to implicate all persons against whom they had ill-will.

17. That even otherwise although not admitted the allegations of the petitioner are that he was driving the Scorpio vehicle. Further, it is alleged that all the accused hurled abuses outside the house of the complainant. It is also alleged that petitioner and Yashpal raised lalkara from the Scorpio car. The part of causing injuries is attributed to the alleged co-accused. Therefore, petitioner is not attributed even according to the case of prosecution active participation in the incident.

18. That the factum/allegation of the complainant was that petitioner and Yashpal Fauji were sitting together in the Scorpio vehicle and then they had exhorted the other co-accused. But, as already submitted said Yashpal Fauji has been found innocent by the investigating agency. Therefore, this allegation of coming in Scorpio car is belied not only by CCTV footage of the house of petitioner, but also by the investigation conducted by the investigating agency finding that Yashpal was not present there. Even the Ld. Trial Court while dismissing the bail application of the petitioner observed that although CCTV footage belied the presence of petitioner, but still he had conspired with his co-accused. This is not in consonance with the case set up by the prosecution.

19. That even otherwise after the arrest of the petitioner, the investigating agency had been changing the stance about the recovery of Scorpio vehicle. It was alleged initially in the first disclosure statement made by the petitioner that the Scorpio vehicle had been was lying parked at the house of his friend at Manesar, but thereafter, a second disclosure statement was recorded, wherein it was stated that the Scorpio vehicle had been given to Vishal co-accused. Therefore, there is no recovery of said Scorpio vehicle from the petitioner."

5. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

6. The State's counsel opposes bail and refers to the reply.

7. It would be appropriate to refer to the following portions of the reply, which read as follows:

"18. That now the criminal trial of the present petitioner is pending before the Learned Trial Court of Additional Sessions Judge, Palwal and the same is fixed for 10.10.2024 for recording of prosecution witnesses. The charge against the present petitioner and other co-accused was framed on 9.5.2024 for the offences punishable under sections 148, 149, 307, 302, 323, 452, 506, 120B of IPC and 25 of Arms Act. No witness of the prosecution has been examined out of a total of 31 witnesses.

19. That it is submitted that the present petitioner is named in FIR and as per allegations, he drove a Scorpio car and reached at spot alongwith other co-accused. Further he exhorted other accused to kill the complainant party while sitting in his Scorpio car and he is the owner of said Scorpio car. No injury either on deceased or injured persons is attributed to the present petitioner. The present petitioner has committed a heinous crime. It is likely of him to flee from trial as well as to influence material witnesses."

8. There is sufficient evidence from an eyewitness account that the petitioner led the assailants and drove the Scorpio, and at his instigation and involvement, the firing took place, killing Sumer Singh and injuring Gulbiri. The arguments addressed above cannot be considered truthful by ignoring the evidence of the petitioner leading the attackers, which part is duly corroborated.

9. A perusal of the bail petition and the documents attached prima facie points towards the petitioner’s involvement and does not make out a case for bail. The impact of crime would not justify bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

10. The petitioner’s custody of around one year and three months cannot be termed prolonged, given the minimum sentence prescribed for the offense, which is life imprisonment.

11. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

12. **Petition dismissed.** All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

19.11.2024
Sonia Puri

Whether speaking/reasoned: Yes
Whether reportable: No.