

2024:PHHC:030481

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

CRM-M-50445-2022 (O&M)

Date of Decision: 04.03.2024

VIJAY

... PETITIONER

VS.

STATE OF HARYANA

.. RESPONDENT

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Deepak Girotra, Advocate
for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

PANKAJ JAIN , J.(ORAL)

1. Prayer in this petition is for grant of regular bail to the petitioner in the case bearing FIR No. 0271 dated 10.08.2021 under Section 25 of the Arms Act and Sections 148/149/302/307/506 IPC (Sections 27 and 30 of the Arms Act with Section 326 IPC were added later on), registered at Police Station I.M.T., Rohtak.
2. Custody certificate has been filed. The same is taken on record.
3. The FIR was registered on the basis of statement of Sunil @ Lala son of Jai Kumar, who alleged as under:-

“Stated that I am resident of above mentioned address and I work as a small property dealer. My father Jai Kumar retired from electricity department we are 3 real brothers I am the eldest younger to me is Ravinder and youngest is Jitender. That Jitender is unmarried and we both brothers are married and on dated 09.08.2021 myself and one boy of my village kailash son of Jugti R/o Kansala we both yesterday on dated 09.08.2021 went for personal work to Sohna and Najabgarh while sitting in my car no. HR12AM-4327 make i-20 white color and after completing our work when we were coming to village Kansala from Morkheri road then in the way near village Kansala upon reaching near liquor vent at 11 pm I stopped my car and from there while taking namkeen

and water bottle the manager of the said liquor vent started arguing in the meantime younger son of Bire Pandit who had opened the namkeen shop that younger son of Bire and three workers of the liquor vent started beating me then I telephone uncles son Sonu son of Phool Singh that here I have been beaten. That at that time my uncle Son Sonu and other uncle son Kuldeep son of Raj Kumar reached at the liquor vent in their car. That immediately upon their coming the workers of the liquor vent called their contractor. That in some time the contractor Niranjana alias Neenu came in scorpio vehicle no. HR12AD-1112 and Anand and Juginder and Bholu and nephew of Neenu, Sunil son of Jagbir and in one more vehicle many boys whose name I don't know who had brought in their hands sticks, daga, gun and pistol and started beating me and my brother Sonu and Kuldeep as soon as they came and then started firing indiscriminately with intention to kill which hit me and my brothers. That I received bullet on my left hip that we raised voice of killed-2 then in the meantime my father and other members of family reached at the spot then all of them started running in their vehicles along with their weapons and at the time of running said us to kill and ran in their vehicles. That I and my brothers have received many injuries due to bullet shots. That my brothers will tell about their injuries themselves. That Niranjana alias Neenu and Anand and Juginder, Bholu, Sunil, Jagbir, younger son of Bire Pandit, workers of liquor vent and other unknown boys with the intention to kill me and my brothers with intention to kill have gave the bullets shots from their weapons. That because of various injuries suffered, my father and my family took me and my brothers to PGIMS Rohtak for treatment and that I came to know that due to inflicting bullets in the chest, my brother Sonu died on the way. That legal action be taken against all who after firing has killed my brother Sonu and also had injured us.”

4. Counsel for the petitioner submits that the petitioner was not named in the FIR. As per the reply filed, the case of the prosecution is that the petitioner conspired with other co-accused Shivender. However, when the complainant-Sunil @ Lala appeared as PW1, he could not identify the present petitioner and rather wrongly identified co-accused Shivinder as Vijay. Reference has been made to the testimony of Sunil Kumar appended

alongwith the reply filed by State as Annexure R-1 which reads as under:

“On 09.08.2021, I was coming from Delhi to my home in village Kansala. Near the village at the wine vend Gopal S/o Satbir and other workers of the wine vend started quarreling with me. In my defence I made a call to my cousins Sonu s/o Phool Kanwar and Kuldeep S/o Raj Kumar and called them to the spot. Both of them arrived there in their personal vehicle. In the meantime, Gopal S/o Satbir made a telephone call to Niranjan @ Nenu and called him to teach us a lesson. Niranjan came there with his brother Anand S/o Satbir, Joginder S/o Satbir, Bholu S/o Satbir and Sunil S/o Jagbir and alongwith them there were 3-4 persons from outside. They arrived there in two vehicles. They were having Doga (double barrel gun), pistol and Rivolver with them. One was having a danda in his hand. They started firing upon us immediately after their arrival. I, Sonu and Kuldeep received fire armed injuries at the hands of the accused. Sonu fell down on the ground due to the impact of fire arm injury. Thereafter, all the accused fled from the spot alongwith their weapons and while leaving from the spot, Niranjan @ Nanu drove his black Scorpio over the body of Sonu who was lying on the ground. My brother Sonu died due to the injuries at the spot and I and Kuldeep received fire arm injuries. Lateron I disclosed to the police the names of the persons who were from outside. Their names were Manjeet S/o Virender, Manish S/o Rajesh, Shivender S/o Raj Kumar and Vijay S/o Jaswant. My brother died due to the injuries caused by all these persons. Police recorded my statement Ex. P1 which bears my signature at point-A. All the accused are present in the Court. The witness has also identified aforesaid accused Manjeet separately on the request of Sh.Peeyush Gakhar, counsel for accused Shivender. The witness has identified accused Vijay present in the Court as accused Shivender. However, alter few moments the witness has identified accused Shivender (the accused Shivender raised his hand when his name was called before the identification). Accused Gopal S/o Satbir is not present in the Court”

5. He thus submits that there is no incriminating evidence against the petitioner and whole of the story put forth by the prosecution stands belied by the fact that the complainant was not even able to identify the petitioner in the Court. He further submits that leave aside test identification

parade, even dock identification has failed viz-a-viz the present petitioner. Petitioner is behind bars for a period of more than 01 year, 10 months and 07 days. Investigation stands concluded. Even most material witness i.e. complainant has been examined. The petitioner has clean antecedents.

6. I have heard learned counsel for the parties and have gone through the records of the case.

7. Without commenting on the merits of the case and considering the incarceration suffered by the petitioner, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

04.03.2024
smriti

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No