

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

CRM-M-37303 of 2016

Date of decision: July 14, 2017

Harbhej Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. N.S. Shekhawat, Advocate for the petitioner.

Mrs. Rajni Gupta, Addl. AG Punjab.

Mr. S.S. Sandhu, Standing Counsel for CBI.

Mr. J.S. Mehendiratta, Advocate for the complainant.

A.B. CHAUDHARI, J (Oral)

Heard learned counsel for the rival parties.

Petitioner-Harbhej Singh seeks regular bail in FIR No.185 dated 05.12.2015, under Sections 302, 120-B of Indian Penal Code, 1860, Sections 3, 4, 5 of Explosive Substances Act and Sections 13, 16, 18 of Unlawful Activities Prevention Act (added later on), registered at Police Station Maqsudan, District Jalandhar, now with CBI for investigation pursuant to the notification issued by the State of Punjab, on 11.09.2016 transferring investigation to CBI.

The petitioner was arrested on 25.01.2016 and since then he is in jail. As stated earlier, vide notification dated 11.09.2016, the investigation was handed over to CBI which is continuing with that investigation. Since the investigation was handed over to the CBI, this

Court decided to grant good and sufficient time to CBI to make

investigation and to make available the incriminating evidence, if any, against the petitioner. This Court had issued notice on 25.10.2016 and the proceedings were adjourned from time to time upon noting in the order dated 14.12.2016 that investigation was handed over to CBI. Thus, after 14.12.2016, CBI got time till date to make investigation. On 06.02.2017, this Court had made the following order:-

“Learned standing counsel for the CBI has invited my attention to the notification dated 11.09.2016 (Annexure P-3) appointing the CBI as investigating agency in the present matter for the reasons stated in the notification.

Though counsel for the petitioner vehemently pressed his petition for bail, I am inclined to adjourn the case for a period of two months as the CBI must be given reasonable time to produce prima facie evidence against the petitioner. It is made clear that the liberty of the petitioner also cannot be curtailed ad infinitum and therefore, no further time will be granted to the CBI more than the period of eight weeks from today.

It is made clear that this Court would not accept the request of the CBI for any further extension of time and would hear the petition for bail on merits.

Adjourned to 05.04.2017.”

Though, the period of 8 weeks expired, this Court adjourned the proceedings to 05.04.2017 to 18.04.2017. On 18.04.2017, again time was granted to CBI and the order reads thus:-

“Heard learned counsel for the rival parties for sometime.

It is necessary to give one more chance to CBI. However, CBI cannot be granted time the manner in which it being sought repeatedly. Hence, by way of last chance, time is granted for placing any further material on record.

Adjourned to 02.06.2017.

A photocopy of this order be placed on the another connected case file.”

The proceedings were adjourned to 02.06.2017, i.e. almost one and half month. On 02.06.2017, the petition was heard at length. Learned counsel for the CBI had, placed before this Court the investigation from the CBI, which was read by this Court and thereafter, the report was resealed and given back to the learned counsel for the CBI.

Briefly stated in the case of prosecution that Pinky Sharma wife of Ajay Sharma had made a statement to the police, on 05.12.2015, pursuant to which FIR No.185 dated 05.12.2015 was registered with the Police Station Maksudan, Jalandhar. In the statement, she stated that a day earlier, i.e. 04.12.2015, at about 7:30 PM, Jagmohan Singh alias Manga came to her house in a Swift Dzire Car and took her husband along with him. Since Ajay did not return, she made repeated phone calls but mobile phone was switched off. Subsequently, she came to know that Jagmohan Singh alias Manga had planted some explosive substance under the seat of the Car and had killed Ajay. Thereafter, on 07.12.2015, her supplementary statement was recorded about the larger conspiracy of the accused persons and the accomplices to kill members of *Namdhari* sect. The trial Court rejected the regular bail application vide order dated 06.09.2016 with the following reasons in Para 5 thereof, which read

thus:-

“5. A perusal of the record reveals that the allegations against the accused/applicant are serious in nature. The prosecution witnesses are yet to be examined. Keeping in view the nature and the gravity of the offences alleged to have been committed in this case, the accused/applicant has not been able to make out a case for the grant of bail. Accordingly, his application for the same is dismissed. The file of the bail application be attached with the main case file.”

As seen from the reasoned part of the order, there is no discussion whatsoever about evidence against the petitioner. It is in this context, CBI was asked to file detailed reply and also produce the papers regarding investigation which were seen by this Court.

Learned counsel for the petitioner vehemently contended that there is no evidence against the petitioner except the alleged disclosure statement of some other accused persons or of the petitioner who was admittedly in police custody. There is no other evidence, according to him, except disclosure statement. Even disclosure statement did not justify any further detention of the petitioner in jail as under trial and according to him, he has been in jail since 12.05.2016. There is no prima-facie evidence against the petitioner much less prima-facie case against him. According to him, even reply filed by the CBI does not show incriminating evidence against the petitioner which could justify his further detention in jail as under trial. His contentions about the involvement of the petitioner in crime need not be considered at this stage by me.

Learned counsel for the CBI vehemently opposed the plea for regular bail to the petitioner and submitted that offences since registered against the petitioner are serious and CBI is making investigation as there appears to be a larger conspiracy and may be even anti-social activities. He, therefore, submitted that until and unless the entire investigation is completed and challan has been filed by the CBI, there is no case made out by the petitioner for grant of regular bail. He invited my attention to the reply filed by the CBI and contended that there is sufficient evidence against the petitioner for his further detention.

In the matter of grant of regular bail, Court is required to balance the liberty of citizen and seriousness of the offence against the detinue. In the instant case, CBI has projected before this Court that since there was explosion of bomb and preparation of handing over of bomb etc. and to eliminate certain persons of a particular sect, the offences are serious. Undoubtedly, that must be given the prime importance. However, at the same time, liberty of the citizen who is arrested and detained in jail will have to be balanced with the prosecution case evidence. In my opinion, it would be appropriate to quote the evidence that has been relied upon by the CBI for opposing the petition for bail. I quote the following portion from Para 4 of the reply as under:-

“4. That during scrutiny of police file of FIR No.185/2015 PS Maqsudan, District Jalandhar, it revealed that on 07.12.2015, complainant Pinky Sharma wife of the deceased Ajay Sharma got her supplementary statement

recorded with Punjab Police in which she stated that:-

“our family was going through very bad condition, some litigation was pending in respect of our home with regard to loan. Some time ago, my husband told me that he had developed the contacts with Hardeep Singh s/o Mehar Singh, resident of village Bholath, ward No.3, District Kapurthala, Gurbhej Singh, resident of Jiwan Nagar, Sirsa, Haryana and Jagmohan Singh @ Manga s/o Tarlok Singh, resident of Gudaipur. They had given him offer of some money. They told him that they wanted to teach a lesson to Jagtar Singh and Uday Singh, those who belong to Namdhari sect and to eliminate Jagtar Singh, who happened to be relative of Uday Singh. Then a week ago, the above named Jagmohan Singh and my husband Ajay Sharma went to meet Gurbhej Singh at Sirsa and he told me that he would go to see Gurbhej Singh. My husband and the above named Jagmohan Singh had come back after meeting . He further told me that the bombs, which they had brought from Sirsa from Gurbhej Singh, those had been further handed over to the above named Hardeep Singh. My husband was offered the money and the above named Hardeep Singh also promised to give one acre of land. He told me that in few days we would become rich. On 04.12.2015, Jagmohan Singh @ Manga came to our house and took my husband along, he was telling that the also had to go to see the above named Hardeep Singh. All of them conspired to kill my husband by blasting something like bomb in the above car.”

Reading of the above shows no mention of the name of the petitioner anywhere in the supplementary statement of Pinky Sharma recorded after two days of the incident. Now coming to Para 5 of the

reply, which reads thus:-

“5. That on 16.12.2015, SI Bikram Singh, SHO Maqsudan arrested above named Hardeep Singh who during the interrogation confessed and disclosed that:-

“there was friendly relations between him and Jagmohan Singh @ Manga s/o Tarlok Singh, resident of Gudaipur, Jalandhar, Ajay Sharma s/o Sham Sunder, resident of Moti Nagar Maqsudan, Harbhej Singh s/o Harbans Singh, resident of Jiwan Nagar, Sirsa, Haryana and Rattan Singh s/o Varinder Singh, resident of Jiwan Nagar, Sirsa, Haryana. They belong to Namdhari sect. Thakur Dalip Singh is chief of our Dera of Namdharis at Sirsa. The head of opposite Dera are Uday Singh and Jagtar Sigh who are also Namdharis. They have ill will with our dera head Thakur Dalip Singh. Due to the enmity, we hatched a conspiracy and planned to kill Uday Singh and Jagtar Singh. About 20 days ago Sh. Jagmohan Singh @ Manga and Ajay Sharma were sent to meet Harbhej Singh s/o Harbans Singh and Rattan Singh s/o Varinder Singh at Namdhari Dera at Jiwan Nagar, Sirsa, Haryana. They had brought three boxes of explosive substance from there and they kept it with Hardeep Singh. On 04.12.2015, Jagmohan Singh @ Manga alongwith Ajay Sharma came to him in his car and took away explosive substance for one blast and two bombs remained with him. On 05.12.15, he learnt in the newspaper that the bomb, which they took away from his blasted in Jagmohan Singh's car and resultantly Ajay Sharma died and Jagmohan sustained minor injuries. On the same day, out of fear, he had thrown the two steel boxes containing explosive substance into small canal leading to Sultanpur from

two different places from the small iron bridge near Bholath. He knows about it and can get it recovered.”

The reliance is placed on the confession of Hardeep Singh. The confessional statement shows that Jagmohan Singh and Ajay Sharma were went to meet Harbhej Singh. They had brought 3 boxes of explosive substance from there and kept with Hardeep Singh (not Harbhej Singh). Thus, this confessional statement also does not show positive evidence against the petitioner. Thus, I quote Para 6 of the reply which reads thus:-

“6. That on 18.12.15, the accused Jagmohan Singh @ Manga who sustained the injuries in blast and was being medically treated at Chhabra Hospital, Jalandhar was arrested and during interrogation, he confessed and corroborated the disclosure made by accused Hardeep Singh. Sh. Jagmohan Singh @ Manga also disclosed that Ajay Sharma was his partner in business and they had good friendship. They used to visit Sirsa, Haryana, where they have Namdhari Dera. Uday Singh and Jagtar Singh are also Namdharis and they had ill will with their Thakur Dalip Singh. Jagmohan Singh in connivance with Hardeep Singh and Ajay Sharma had hatched a conspiracy to kill Uday Singh and Jagtar Singh. In return, they promised Ajay Sharma, who was very poor, to give money and Hardeep Singh promised him to give one acre of land. As they used to visit Sirsa, Haryana and developed the contacts with Harbhej Singh s/o Harbans Singh and Rattan Singh s/o Varinder Singh, residents of Jiwan Nagar as they were also Namdhari. They also had tussle with Uday Singh and Jagtar Singh, so they also involved them in conspiracy to kill Uday Singh and Jagtar Singh. They told Jagmohan Singh that they would give them explosive substance. In the last week of

November 2015, Jagmohan Singh @ Manga alongwith Ajay Sharma went to Jiwan Nagar, Sirsa, Haryana in his Swift Dzire Car. From there, they brought explosive substance for three bombs in three boxes from petitioner Harbhej Singh and Rattan Singh and the same were kept with Hardeep Singh of Bholath.”

Para 6 above shows the relationship of Harbhej Singh-petitioner and nothing beyond that. Para 8 of the reply shows that Harbhej Singh was arrested from the IGI Airport, when he was allegedly trying to flee the Country and that he had confessed on 29.01.2016/30.01.2016 as under:-

“On 29.01.2016, during the interrogation, Harbhej Singh confessed that “about two months ago, I gave three tiffin bombs having explosive substance to Jagmohan Singh @ Manga s/o Tarlok Singh, resident of Gudaipur and Ajay Sharma resident of Maqsudan. Apart from that I also have two more tiffin bomb. Out of them, one I had given to Rattan Singh s/o Varinder Singh, resident of Jiwan Nagar. About that only Rattan Singh has the knowledge, I used to visit village Hardeep Singh's Aunt and Uncle Jinder Singh at Puranpur, District Peelibhit, UP. I had hidden one tiffin bomb in his fields and only I am having knowledge about it and I can get it recovered.” But he did not get recovered those bombs. On 30.01.2016, during the interrogation, Harbhej Singh further disclosed that:-

“in the end of November 2015, I along with Rattan Singh met Palwinder Singh @ Dimple s/o Achhar Singh, resident of B-260, Shiva Ji Vihar, New Delhi and Mehnga Singh s/o Harbhajan Singh caste Jat, resident of Sant Nagar, PS Rania, District Sirsa, Haryana at Delhi in Innova Car. They also belong to our religion and are Namdhari Sikhs. Palwinder Singh @ Dimple and Mehanga Singh gave

me three tiffin bombs packed in one card board box as gift pack and asked me to deliver gift pack containing bomb to Jagmohan Singh @ Manga resident of Gudaipur, who will meet us near Sirsa. When we reached near Tikoni Chowk, Hisar Bye pass with the gift containing bombs, there Jagmohan Singh @ Manga along with a haircut person met us in there swift car no. PB-08CJ-6052, as Jagmohan Singh @ Manga is a Namdhari, so we know him personally. We handed over the gift pack containing bombs to him. He kept the pack in his car.”

It is thus, clear that till 29.01.2016 and 30.01.2016, when the confessional statement of the petitioner was recorded, there is hardly any involvement of the petitioner. The above said confessional statements, namely 29.01.2016 and 30.01.2016 are being relied as evidence against the petitioner.

As these confessional statements are matters of record, there is no question of tampering the same and they are very much with the investigating agency. The reply does not show thereafter, any evidence against the petitioner even collected by CBI. The reliance in the entire reply placed on the confessional statement of the petitioner, which were recorded by the Punjab Police since by that time CBI was not engaged as investigating agency and was engaged for the first time vide issuance of notification dated 11.09.2016. Thus, though, the allegations by CBI are that there are serious allegations against the petitioner, but fact remains that the quality of evidence alleged against the petitioner is as above. As rightly contended by the counsel for the petitioner, the investigation of the petitioner was not made after CBI took over investigation. However, to my mind CBI may in future, require the custody of the petitioner for

investigation and therefore, though, this Court is inclined to grant bail to the petitioner, liberty will have to be reserved accordingly.

CRM-M-37303 of 2016 is allowed. Petitioner be admitted to bail subject to the satisfaction of Chief Judicial Magistrate/Duty Magistrate concerned. The petitioner shall attend police station, namely Maqsudan, District Jalandhar on Wednesday and Saturday between 11:00 AM to 4:00 PM on every week. Petitioner shall deposit his passport with the trial Court who shall take the same into custody and shall not release the same without permission of this Court. The petitioner shall not leave the place of residence. Liberty is reserved in favour of the CBI to apply for custody of the petitioner in accordance with law, in the eventuality. Petitioner shall not tamper, influence and threaten the prosecution witnesses and complainant as well.

(A.B. CHAUDHARI)
JUDGE

July 14, 2017

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No