

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

**Crl. Misc. No.M-16975 of 2018 (O&M)
Date of Decision: October 22, 2018**

Ranjodh Singh @ Sunny Yahma

.....PETITIONER(s).

VERSUS

State of Punjab

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. T.S. Sanga, Sr. Advocate with
Mr. Narinder Singh, Advocate
for the petitioner (s).

Mr. Sandeep Kumar, D.A.G., Punjab.

SURINDER GUPTA, J.(Oral)

The present petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.127 dated 10.08.2016 registered for the offences punishable under Sections 302,364,473,148 read with Section 149 and 120-B of Indian Penal Code and 25 of Arms Act, at Police Station Sadar Tarn Taran.

Heard.

Present FIR was registered on the statement of Gurjit Kaur wife of Dilbagh Singh. As per the complainant, gang of Davinder Singh alias Davinder Shooter took Dilbagh Singh with them on 08.08.2016. As per the supplementary statement suffered by her on 15.09.2016, petitioner was also with Davinder Singh alias Davinder Shooter when Dilbagh Singh was taken away.

Learned State Counsel has argued that there were two gangs, one headed by Davinder Singh alias Davinder Shooter and another by Bobby Malhotra. Dilbagh Singh was taken away from his house by Davinder Singh alias Davinder Shooter and member of his gang including petitioner who had also taken away Bagga Khan and Ankul Khatri. Bagga Khan got recorded his statement under Section 164 Cr.P.C. before Addl. Chief Judicial Magistrate, Tarn Taran on 24.04.2017, wherein he narrated the whole incident.

As per the statement of Bagga Khan, on 07.08.2016, he was present at Malerkotla, where he received a phone call of Ankul Khatri, who asked him to reach Amritsar. He took the bus and reached Amritsar in the evening. From there, on the asking of Ankul Khatri, he took a bus for village Mehta and alighted at village Nawan Pind. As guided by Ankul Khatri, he stayed at the petrol pump for 10-15 minutes, where one Fortuner and one Swift car of white colour came. Ankul Khatri alighted from the Fortuner to shake hand with him. Davinder Bambiha and Tara armed with pistols also got down from the Fortuner car. They were accompanied by Budha, Jumpy Don, Nishan, Gopi Ghanshyampur, Nawab, Babbar, Kandowalia Rana, Pawan Bihari, Monu Mota, Sunny Yahma (petitioner). They all took out pistols and asked Bagga Khan to sit in the vehicle, otherwise, he will be killed there. Out of fear, Bagga Khan took seat in the Fortuner, which was taken towards Amritsar. They took the vehicle to Fatehgarh Churiyan to a farm house, which was having two rooms, swimming pool and a kitchen and detained Bagga Khan there for a night. There Ankul Khatri kept on beating him. A person with them apprised that

Goru Bache, Dilbagh, Bobby Malhotra and all other persons will be picked up.

On 08.08.2016 at about 9.00/10.00 am, while starting from the farm house Rana Kandowalia and Davinder Bambiha started quarreling outside the farm house. Rana Kandowalia, Pawan Bihari, Monu Mota went in their car and remaining persons boarded Fortuner and proceeded towards village Mehta. On the way, they alighted at a tubewell and stayed there for 2-3 hours. At about 5.00 pm, Ankul Khatri had a talk with Dilbagh, who was in his village. Thereafter, they all proceeded towards village of Dilbagh, who was picked from his house. From the house of Dilbagh, they came to the house of maternal uncle of Gopi Ghanshyampur, where they stayed for the night, where Gopi, Harry Chatha and remaining others gave beatings to all three of them. They were asking to pick up Goru Bacha and Bobby Malhotra to finish the entire gang. On 09.08.2016, Ankul Khatri flashed a message of Jaggu Bhagwanpuria that Bagga Khan and Dilbagh have been kidnapped and apprised Bobby Malhotra, who agreed to meet Ankul Khatri. At about 8.00 pm, they started from Dhani of maternal uncle (of Gopi) and reached Tarn Taran in Fortuner. Ankul Khatri sent a message to all of them to meet in village Pandori. There Bagga Khan, Dilbagh, Tara and Nishan alighted from the vehicle. Hands of Bagga Khan and Dilbagh were tied with a tape. Tara and Nishan stood beside them with pistols in their hands, while Davinder and Gopi left from there. After 10-15 minutes, there was sound of firing and Davinder Bambiha with Nawab rushed towards road side from the tubewell and started calling Tara and Nishan, saying that they had been trapped. Davinder fired at Dilbagh and thereafter Nawab and Tara also fired

at him. Taking benefit of the darkness, Bagga Khan succeeded in running away from the spot. On the next day, he came to know that Ankul Khatri had been injured and Dilbagh had died.

Learned counsel for the petitioner submits that petitioner was not named in the FIR. The complainant after 36 days of the incident, had named him in her supplementary statement. As per statement of Bagga Khan, Dilbagh Singh was killed by Davinder, Nawab and Tara. Petitioner had no role in his killing. Even the trial Court has taken note of this fact that it was a clash of two gangs and more than 200 rounds of fire shot were exchanged in the encounter of two gangs. The petitioner was arrested in October, 2016 and is in custody since then. The case is still at the stage of commitment as the police is not producing the petitioner and other accused in court.

Learned State Counsel submits that after the presentation of challan, the same has not been committed, as different accused are in different jails and were not produced in court being gangsters and security reasons.

It is a case which speaks of apathy of the prosecution, police and Jail Authorities. There is perhaps nobody to take care that accused are not being produced in the Court for a long period. The public prosecutor is perhaps of the view that it is not his duty to procure the presence of accused in Court or even to make an attempt for production of the accused in Court through video conferencing. Jail Superintendent has explanation for non-production of the accused on the ground that police is not providing adequate security and the police is not producing the accused like petitioner

with the plea that they are gangsters.

The question, which arise for consideration is as to whether entire system has collapsed and there is total lack of coordination amongst these three wings of the State. Whether the monitoring Cell set up by the State to look into such cases is watching the functioning of these three branches responsible for production of accused in Court and progress of trial.

Admittedly, a period of more than 20 months has elapsed after the presentation of the challan but the learned Illaqa Magistrate could not commit the case to the Court of Sessions as the accused are not being produced in Court. Report and the information was called about the action taken by the Public Prosecutor and the Jail Authorities but the reply submitted does not indicate any mechanism of co-ordination between prosecution, jail authorities and police.

I am fully aware that the negligence of one or the other wing of the State cannot be a reason to allow bail in serious crime. In this case, petitioner was not named in the FIR. Petitioner was named in supplementary statement of complainant recorded after 36 days of incident. Bagga Khan whose statement learned State Counsel has relied, has nowhere stated about role of petitioner in murder of Dilbagh.

Taking note of the period of custody of petitioner; status of case of the presentation of challan; period that will be consumed in committing that case to Court of Sessions for trial and then time, which Sessions Court may require to conclude trial; but without expressing any opinion on merits of the case, the present petition is allowed. Petitioner

Ranjodh Singh @ Sunny Yahma is ordered to be released on regular bail on furnishing bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/Duty Magistrate, subject to following terms:-

- a. The petitioner shall comply with the conditions mentioned in Section 437(3) Cr.P.C.
- b. In the event of his absence on any date of hearing, the benefit of bail allowed to the petitioner shall stand withdrawn. The trial Court shall be competent to cancel his bail bond and surety bond and proceed to procure his presence in accordance with law. In that eventuality the petitioner shall have to apply for bail afresh.
- c. He shall not leave the country without prior permission of the Court.

October 22, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***