

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Date of Decision: *August 21, 2020*

1.

Criminal Miscellaneous No.M-18304 of 2020

Pankaj Bansal

..... PETITIONER(S)

VERSUS

State of Punjab

..... RESPONDENT(S)

. . .

2.

Criminal Miscellaneous No.M-18857 of 2020

Sohail Singh Brar

..... PETITIONER(S)

VERSUS

State of Punjab

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE SANT PARKASH**

. . .

PRESENT: - Mr. Himmat Singh Deol, Advocate, for petitioner in CRM-M-18304 of 2020.

Mr. J.S. Bedi, Senior Advocate, with Mr. Sonpreet S. Brar, Advocate, for the petitioner in Crm-M-18857 of 2020.

Mr. H.S. Multani, Assistant Advocate General, Punjab, assisted by Ms. Bhawna Gupta, Assistant Advocate General, Punjab.

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Sant Parkash, J

The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.

CRM-19011 of 2020 in CRM-M-18304 of 2020

Application for placing on record copy of FIR No.129 dated 14.10.2015 under Sections 307, 435, 332, 333, 353, 283, 186, 148, 149 IPC; Sections 25, 27 of Arms Act, 1959; and Section 3/4 of the Prevention of

Damage to Public Property Act, 1984, Police Station, Bajakhana, District Faridkot, is taken on record as Annexure P-10.

CRM-M-18304 & M-18857 of 2020

This judgment shall dispose of aforementioned two petitions viz. CRM-18304 of 2020 and CRM-M-18857 of 2020, as they arise out of same FIR and facts.

The petitioners pray for grant of regular bail in FIR No.130 dated 21.10.2015, under Sections 302, 307, 34, 201, 218, 166-A IPC (Sections 109, 194, 195 IPC added lateron) and Sections 25 & 27 of the Arms Act, registered at Police Station, Bajakhana, District Faridkot.

According to the prosecution, on 01.06.2015, a sacrilege incident took place in Gurudwara at Burj Jawahar Singhwala, District Faridkot. Therefore, FIR No.63 dated 02.06.2015, under Sections 295-A and 380 IPC was registered at Police Station Bajakhana, District Faridkot. Thereafter, similar incident took place on 25.09.2015, wherein two hand-written posters containing sacrilegious contents were pasted near a Gurudwara. Consequently, second FIR No.117 dated 25.09.2015 was registered under Section 295-A IPC, Police Station Bajakhana, District Faridkot. Again on 12.10.2015, in a third incident torn pages of holly Shri Guru Granth Sahib were found scattered in village Barghari. Consequently, on the complaint of Kulwinder Singh, Manager of the said Gurudwara, FIR No.128 dated 12.10.2015, under Sections 295-A and 120-B IPC was registered at Police Station Bajakhana, District Faridkot. Thereafter, mass protests were made by the general public in between 12.10.2015 to 14.10.2015 at villages Kotkapura and Behbal Kalan against the above said

three incidents of sacrilege and inaction of the police, which led to firing by the police, causing injuries to certain protesters and death of two of them.

As a result, FIR No.129 dated 14.10.2015 was registered under Sections 307 IPC, Police Station Baja Khana and under Arms Act for destruction of public property. On the same day, FIR No.192 was registered at Police Station Kotakpura for similar offences.

State government observing that situation may further deteriorate, appointed inquiry commission headed by Justice Jora Singh (Retd.) to inquire into the aforesaid incidents of sacrilege and police firing on 14.10.2015 at village Kotkapura and Behbalkalan, who gave his report on 29.06.2016.

On perusal of report of inquiry commission, Government formed an opinion that three basic questions were not specifically answered. Therefore, rejecting the report as inconclusive, ordered for another commission of inquiry headed by Justice Ranjit Singh (Retd.), who gave his report against one of the accused who were responsible for firing incident, which took place on 14.10.2015.

For making out a case for bail, learned counsel for the petitioners have submitted that the petitioners have been falsely implicated. In the earlier investigation, they were cited as prosecution witnesses and their statements under Sections 161 and 164 Cr.P.C. were recorded as witnesses on 22.02.2019 alongwith Charanjit Singh, Security Guard who handed over .12 bore gun which was used by SP Bikramjit Singh and fabricated pallet marks on the Government Gypsy on 14.10.2015 in order to create false defence regarding the main incident at Behbal Kalan in which two persons had died.

Now, after more than 4 ½ years, they have been arrested for newly added offences under Sections 109 (added vide DDR No.30 dated 20.06.2020), 194, 195 (added vide DDR No.19 dated 30.06.2020) IPC after new Chairman of SIT took over. Learned counsel have submitted once the investigation has been concluded in a particular manner by the SIT, there was no justification to effect the arrest of petitioners by incorporating new offences even after such a long delay at the whims of new Chairman of SIT. Petitioners have clean record and have never been involved in any criminal case. The petitioners were not present at the place of occurrence at the relevant time. No weapon was recovered from them, as such, offence under the provisions of the Arms Act are also not attracted. The investigation had been completed and challan was presented against Charanjit Singh, who is already on bail. Other co-accused namely Bikram Jit Singh, Pardeep Singh and Amarjit Singh Kalar have also been granted the benefit of pre-arrest bail by this Court. The story of the prosecution is false and highly improbable. Petitioner – Pankaj Bansal (in CRM-M-18304 of 2020) is in custody since 20.06.2020, while petitioner – Sohail Singh Brar (in CRM-M-18857 of 2020) is in custody since 16.06.2020. Conclusion of trial will take long time. No useful purpose will be served by detaining the petitioners in custody any further.

Per contra, learned counsel for the State has opposed the petitions and submitted that according to an affidavit dated 17.08.2020 filed by Kunwar Vijay Pratap Singh, IPS, Inspector General of Police, on behalf of the Special Investigation Team (SIT), the role attributed to petitioner – Pankaj Bansal is that he aided in the crime by asking co-accused Sanjeev Kumar and Charanjit Singh (private guard) to go to the residence of Sohail

Singh Brar and after hatching a conspiracy with accused persons of Behbal Kalan, fired with .12 bore gun and fabricated false defence theory, whereas the role of petitioner – Sohail Singh Brar is that he provided his premises as well as .12 bore gun knowingly and intentionally to the accused persons to fabricate a false story. Fake bullet marks were made at the residence of Sohail Singh Brar by using his gun and vide DDR No.19 dated 30.06.2020 offence under section 194,195 IPC has been added.

It has further been contended that both the aforesaid petitioners played an active role in the incident; hatched a conspiracy; and fabricated false evidence by creating fake bullet marks on the escort gypsy of SSP, Moga. The alleged offences committed by the petitioners are very serious in nature, and if they are enlarged on bail, there is every likelihood that they would influence the witnesses and hamper the trial.

Admittedly and evidently, after the three incidents of sacrilege, a mob of about 500/600 people had gathered at a public place. This fact cannot be denied that such a large mob would not remain silent when the protesters were having swords, barchhas etc., and had set ablaze three police vehicles. In order to control such a large mob, it was quite obvious and natural that the police authorities would also take some action to disperse the mob. It is further not disputed that two persons had died in the said incident but the whole blame of the incident cannot be fastened upon the police only.

As per the allegations of the prosecution, the role attributed to petitioners – Pankaj Bansal and Sohail Singh Brar is of firing at Behbal Kalan; hatching a conspiracy of self defence; and fabricating evidence by creating fake bullet marks on the escort gypsy of former SSP, Moga.

After having heard learned counsel for the parties at length and going through the relevant record, this Court is of the considered opinion that both the petitioners are entitled to the concession of regular bail. Admittedly and evidently, the statements of both the petitioners were recorded by the previous Investigating Agency under Sections 161 and 164 Cr.P.C. as witnesses. They have been found to be involved after recording two DDRs bearing No.30 dated 20.06.2020 and No.19 dated 30.06.2020 after a considerable delay of more than 4 ½ years. It is a matter of debate whether the provisions of Sections 194 and 195 IPC are attracted or not qua the present petitioners. Admittedly, neither of them was present at the time of incident having taken place. Both the petitioners (Pankaj Bansal and Sohail Singh Brar) are in custody w.e.f. 20.06.2020 and 16.06.2020, respectively and they are not required for any further investigational purposes. Co-accused, namely Pardeep Singh, Bikram Jit Singh and Amarjit Singh Kalar have also been granted anticipatory bail by this Court vide orders dated 13.02.2019, 15.02.2019 and 20.02.2019, respectively.

Without making any comment on the merits of the case and taking into consideration the peculiar facts & circumstances, the petitions are allowed and petitioners – Pankaj Bansal and Sohail Singh Brar, are ordered to be released on bail, on furnishing adequate bail/surety bonds to the satisfaction of the trial court/Chief Judicial Magistrate/Duty Magistrate.

(Sant Parkash)
Judge

August 21, 2020
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No