

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

204

CRM-M-19011-2019

Decided on : 18.09.2020

Mukesh Kumar @ Lala

... Petitioner

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Navkiran Singh, Advocate for the petitioner.

Mr. H.S. Sullar, DAG, Punjab.

(The proceedings are being conducted through
video conferencing, as per instructions.)

G.S. Sandhawal, J. (Oral)

The petitioner seeks regular bail in a petition filed under Section 439 Cr.P.C. in FIR No. 185 dated 27.07.2018 under Sections 307, 302, 120-B, 201, 212, 216 IPC and Section 25 of Arms Act, 1959 and Section 3 (2) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, registered at Police Station Rama Mandi, District Jalandhar.

Counsel for the petitioner has submitted that the petitioner is in custody since 05.08.2018 and the similarly situated co-accused namely Gurvinder Singh @ Baba has been granted the benefit of regular bail in CRM-M-12091-2019 on 10.04.2019 (Annexure P-6). It is submitted that the petitioner is similarly situated as such.

Counsel for the State on the other hand has submitted that the recovery of a motorcycle as such has been effected from the petitioner, which was used in the crime.

A perusal of the FIR, which was lodged by Pardeep Kumar, would go on to show that he and the deceased Ajay Kumar @ Dona

alongwith another friend was standing outside the Gym at 7:10 PM on 22.07.2018, when two boys with muffled faces fired four gunshots with a Pistol at Ajay Kumar @ Dona, due to which he fell down. The persons had fled from the spot on a motorcycle which was parked on the opposite side of the road. The petitioner has been nominated as accused on the statement of one Kuldeep, which was recorded on 02.08.2018 (Annexure P-2). The said person had stated that he had over heard the petitioner talking with other persons including Gurvinder Singh @ Baba that Joga had called from Hoshiarpur Jail and work of killing Ajay Kumar @ Dona has to be done and the Pistol has been arranged. On the next day, he had allegedly come to know that the said person had been murdered. As per the confessional statement of the petitioner as such, which was recorded on the same day, the same story was put forth by the police.

The bail has been declined as such by the Additional Sessions Judge, Jalandhar on 30.10.2018 (Annexure P-5), keeping in view the above material and on account of the fact that the case was at the initial stage and keeping in view the gravity of the offence, the person is not liable to be released.

On an earlier occasion, the Coordinate Bench had directed that the reply be filed by the State to disclose whether Gurvinder Singh @ Baba has also been involved in other cases, since the petitioner is also involved in five other cases.

The affidavit of Mr. Harsimrat Singh, PPS, Assistant Commissioner of Police, Central Jalandhar has been filed, showing that

Gurvinder Singh @ Baba has also as many as six more cases against him and was similarly situated as the petitioner.

Counsel has further pointed out that he was granted anticipatory bail in FIR No.140 dated 11.11.2015 by this Court and in FIR No.70 dated 16.04.2018 on 03.05.2018 by the Judicial Magistrate 1st Class. He stands acquitted in FIR No.29 dated 20.02.2013 and in FIR No.30 dated 20.02.2013 was convicted for imprisonment for three months under Sections 22,61 and 85 of NDPS Act.

It is admitted that the charge was framed on 03.08.2019 and no witness has been examined out of the 30 witnesses. The custody certificate shows that the petitioner has been in detention for 2 years 1 month and 12 days. It not disputed that the State has not made recovery of any weapon as such from the petitioner and on the basis of an extra judicial confession made by the petitioner and a stranger, veracity of which is to be tested during the trial, he continues to be in custody.

In such circumstances, the petitioner is similarly situated as the accused Gurvinder Singh @ Baba and since, the trial will take considerable time, it would be just and appropriate if the petitioner is also granted the benefit of bail.

Accordingly, the petition is allowed and the petitioner is directed to be released on bail to the satisfaction of Duty Magistrate/Illaqa Magistrate, Jalandhar.

(G.S. SANDHAWALIA)
JUDGE

September 18, 2020

Naveen

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No