

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

CRM-M-13204-2021
Date of decision: 09.11.2021

Lovepreet Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. J. S. Moudgill, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 102 dated 23.05.2016, registered under Sections 396, 353, 186, 411 of the IPC and Sections 25, 27 of the Arms Act, 1959 at Police Station City South, District Moga.

Learned counsel for the petitioner, at the very outset, relies upon order dated 07.08.2020 passed in CRM-M-18284-2020, vide which co-accused Kuljinder Singh @ Kala has been granted the concession of regular bail by this Court. The operative part of the order reads as under:

“Counsel for the petitioner submits that the new ground for filing the 3rd petition is that subsequently on 29.3.2019, the trial Court has recorded the statement of Ashok Kumar, who has appeared as PW-23. Ashok Kumar is a witness to the extra judicial confession

made by the petitioner regarding confession of participating in the commission of dacoity with the other persons.

Counsel for the petitioner submits that PW-23 Ashok Kumar has stated that he never met any person, namely Talwinder Singh @ Nikku @ Mandeep Singh and petitioner Kuljinder @ Kala and no one came to his house in the month of August, 2017 and no one confessed any guilt regarding commission of dacoity along with other persons. This witness further submitted that he did not know the accused present in the Court and had seen the accused for the first time in the Court. This witness was declared hostile by the Public Prosecutor through cross-examination, however, he remained consistent with the stand taken during examination-in-chief though he was confronted with his previous statement made before the police.

Counsel for the petitioner has submitted that as per the averments in the FIR registered at the instance of Parveen Shahu, Chief Manager of OBC, Baghapurana, he along with his guard and Peon started for taking the cash from the chest of bank of India in a private Innova car bearing registration No. PB-47-A-0003. He was carrying Rs.60 Lacs and all the currency notes were of the denomination of Rs.500/- each and were kept in a trunk. When they were proceeding, one white colour car in the way, 6/7 persons with muffled faces carrying gun and pistols alighted from the car and started firing towards the car, which hit on the chest and mouth of the guard. The complainant by opening the door went to save his life and in the meantime, aforesaid young persons by breaking the rear mirror of the car had taken the amount of Rs.60 lacs as well as the double barrel gun of the guard along with

cartridges.

Counsel for the petitioner submits that the FIR was registered on 23.5.2016 as a case of dacoity and during investigation and till submission of the challan, the petitioner was nominated as an accused. Counsel for the petitioner further submits that the police, thereafter, recorded the statement of one Ashok Kumar, before whom the petitioner allegedly made an extra-judicial confession in the month of August, 2017 and thereafter, the petitioner was nominated as an accused in this case and the supplementary challan was presented against him.

Counsel for the petitioner also submits that except the aforesaid statement of Ashok Kumar before the police, there was no other legal evidence against the petitioner and since after the dismissal of the second application by this Court, the trial Court has recorded the statement of Ashok Kumar as PW-23 and he has neither identified the petitioner nor stated that any extra-judicial confession was made by him, considering the fact that the petitioner is presently in custody for the last about three years, he may be granted bail as a number of witnesses have to be examined.

Learned State counsel, on instructions from the Investigating Officer, has, however, filed the custody certificate and submitted that apart from the aforesaid evidence of extra judicial confession, the police during the investigation recorded the disclosure statement of co-accused Talwinder Singh @ Nikku @ Mandeep Singh in which he has stated that after committing the offence, they kept the money with the petitioner and after some time, they have taken the same back by giving share of the petitioner.

In reply, learned counsel for the petitioner has

submitted that it is a matter of trial to be decided at the time of final judgment whether the disclosure statement made by the co-accused is admissible against the petitioner.

After hearing counsel for the parties and also considering the fact that the petitioner was not initially nominated in the FIR and after a long lapse of time by recording the confession statement before PW-23 Ashok Kumar, who was declared hostile and did not support the prosecution version and also in view of the fact that the petitioner is in custody for the last about 03 years and is not involved in any other serious crime, except an FIR under Section 52-A of the Prison Act, as per the custody certificate; and also considering the fact that the trial is going on a slow pace due to COVID-19 situation and out of 45 witnesses, only 27 witnesses have been examined, the present petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.”

For the sake of brevity, the facts are not reproduced again.

Learned counsel for the petitioner further submits that co-accused Talwinder Singh @ Nikku has also been granted the concession of regular bail by this Court, vide order dated 11.01.2021 passed in CRM-M-24184-2020.

Learned counsel further submits that the petitioner is in judicial custody for the last 05 years, 04 months and 05 days and the case is still at the stage of recording the evidence of prosecution witnesses and out of 45 prosecution witnesses, only 27 witnesses have been examined so far.

Learned State counsel has filed the custody certificate, as per

which, the petitioner is involved in some other cases, out of which, in 08 cases he already stands acquitted, whereas in 02 cases he is facing trial and in 01 case he has been convicted.

Learned State counsel, however, could not dispute that the prosecution evidence is not concluded as noticed even in aforesaid order dated 11.01.2021.

In reply, learned counsel for the petitioner submits that the only evidence against the petitioner is a confessional statement made before PW-23 Ashok Kumar, who has not supported the case of the prosecution and has been declared hostile.

After hearing learned counsel for the parties, without commenting upon the merits of the case, considering the long custody of the petitioner as well as the fact that conclusion of trial is likely to take some time as the case is still at the stage of recording the prosecution evidence, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaq Magistrate, concerned.

09.11.2021

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No