

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

CRM-M-23823-2021
Date of decision:-9.7.2021

Mohit Malhotra alias Kaka

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.D.K. Bhatti, Advocate
for the petitioner.

Mr.J.S. Ghuman, DAG, Punjab.

H.S. MADAAN, J.

Case taken up through video conferencing.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner – Mohit Malhotra alias Kaka, aged about 25 years, resident of House No.170, Aman Nagar, Backside Gulab Devi Road, Jalandhar, an accused in FIR No.48 dated 25.3.2020, under Sections 336, 506, 34 IPC and Section 25 of Arms Act (lateron added

Section 307 IPC), registered with Police Station Basti Bawa Khel, Police Commissionerate, Jalandhar, District Jalandhar.

Briefly stated, the facts of the case as per the prosecution story are that on 25.3.2020, Aman son of complainant Tarsem Lal alias Sema, a resident of Baba Kahandas was returning home after making certain purchases from the market at Raj Nagar; at about 11:30 a.m. when he had reached near canal bridge, a little ahead of Chunni Lal Karyana shop and in front of Bagha Building Material store, then Shivam, resident of Baba Kahan Dass Nagar and present petitioner/accused Mohit Malhotra alias Kaka, resident of Shaheed Babu Labh Singh Nagar intercepted Aman and started arguing with him, however, certain persons intervened and made both sides leave the spot; Aman reached home; after some time Shivam and present petitioner/accused Mohit Malhotra alias Kaka along with one Akashdeep, resident of New Shaheed Babu Labh Singh Nagar came and started giving abuses to Aman and his father Tarsem Lal @ Sema by standing near the house of complainant; the complainant went to counsel present petitioner/accused Mohit Malhotra alias Kaka, Shivam and Akashdeep; the complainant was followed by his son Aman, then Akashdeep took out a revolver from his dub and fired towards the complainant and his son Aman; the complainant hid behind a tree, whereas Aman laid down on the ground; the assailant fired three rounds and thereafter all three of them ran away from the spot. The motive behind the incident was that on 25.2.2020 Aman had gone to attend hearing in his case, where he was attacked by 20-25 boys. However, out of fear, they had not reported the matter to the police and the incident was on account

of the said previous occurrence on 25.2.2020. On matter being reported to the police, formal FIR was registered for the offences under Sections 336, 506 and 34 IPC and Section 25 of the Arms Act and subsequently offence under Section 307 IPC was added.

Apprehending his arrest, the present petitioner had approached the Court of Sessions at Jalandhar seeking grant of pre-arrest bail by filing an application, which was assigned to Additional Sessions Judge, Jalandhar. However, his such application was dismissed by the said Court vide detailed order dated 7.6.2021. As such, the present petitioner has approached this Court by way of filing the instant petition asking for the similar relief, which request is being opposed by the State counsel.

I have heard learned counsel for the parties besides going through the records.

In the order passed by learned Additional Sessions Judge, Jalandhar, it has been mentioned that petitioner has got a past criminal record inasmuch he is involved in the following cases:

- (i) FIR No.168 dated 5.10.2019, under Sections 307, 323, 325, 341, 148, 149 IPC, PS Divn.No.2, Jalandhar.
- (ii) FIR No.30 dated 7.4.2020, under Sections 188/212/216 IPC and Section 22 of NDPS Act and Section 25 of Arms Act, PS Divn.No.4, Jalandhar.
- (iii) FIR No.152 dated 16.11.2020, under Sections 326, 341, 324, 148, 149 IPC, P.S. Divn.No.2, Jalandhar.

Thus it comes out that the petitioner/accused is involved in cases relating to commission of heinous offences and has got criminal

bent of mind. In the instant case, he is specifically named in the FIR, though fortunately neither the complainant nor his son Aman were hit by the shots fired at them by Akashdeep and as per the prosecution version the present petitioner himself had not caused any injury to the complainant and his son, rather it is a case of no injury but then the very fact that petitioner had accompanied Akashdeep and Shivam to the place of incident and had abused the complainant and his son and then Akashdeep had fired three rounds at the complainant and his son, thereafter all three of them had ran away from the spot. Thus it comes out that there was prior meeting of mind between all the three culprits. Section 34 of IPC provides that when a criminal act is done by several persons in furtherance of their common intention of all, each of such persons is liable for that act in the same manner and if it were done by him alone. Thus all the three culprits are equally liable, though actually shots were fired by Akashdeep. Petitioner/accused Mohit Malhotra alias Kaka is said to be present alongwith Shivam when a quarrel had taken place between two of them and Aman near Canal Bridge in front of Bagha Building Material store and thereafter he had accompanied Shivam and Akashdeep to the spot where Akashdeep had fired at the complainant and his son Aman clearly points out towards petitioner having common intention with Akashdeep and Shivam. He can simply not wash his hands off the matter stating that since he himself had neither caused nor attempted to cause any injury to the complainant or his son Aman, as such he has not committed any offence and deserves to be granted pre-arrest bail.

In view of such position and petitioner coming out to be habitual criminal being involved in three more criminal cases, he is not entitled to pre-arrest bail. On account of other reasons also, this petition cannot be accepted. The main reason being that custodial custodial interrogation of the petitioner is necessary for complete and effective investigation to find out as to how the incident was planned and executed, the role played by each of the culprits and their associates, if any from where the firearm and cartridges were procured and where the firearm was disposed of or concealed after the incident etc. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely, which is not called for.

Furthermore, the apprehension expressed by the State counsel that if petitioner is granted bail, there is every likelihood to his absconding and even tampering with the prosecution evidence cannot be brushed aside lightly.

In case of *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Therefore, the facts and circumstances of the case do not call for acceptance of the petition. The same is doomed for failure and is dismissed accordingly.

It may be mentioned here that nothing discussed hereinabove shall have any bearing on the merits of the case.

9.7.2021

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No