

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

S. No.204

CRM-M-30559-2020

Date of Decision: 07.06.2021

SUKHCHAIN SINGH @ CHAINA

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr. Ranbir Singh Sekhon, Advocate,
for the petitioner.

Ms. Samina Dhir, Deputy Advocate General, Punjab.

ARCHANA PURI, J. (ORAL)

The matter has been taken up through video conferencing in the light of COVID-19 pandemic.

This petition has been filed by the petitioner, namely, Sukhchain Singh @ Chaina, under Section 439 Cr.P.C. for seeking regular bail in case bearing FIR No.146 dated 26.08.2014 under Section 399, 402, 413 IPC and Sections 25/27 Arms Act, Police Station Ghall Khurd, District Ferozepur.

As per the version of the prosecution, on 26.08.2014, in pursuance of secret information received by ASI Davinder Singh to the effect that the present petitioner along with various other persons, has constituted a gang and are present near the bath rooms, which have been constructed on the eastern side of grain market, Talwandi Bhai, thereby making preparation to commit dacoity, the disclosed place was raided and the present petitioner along with fellow accused was apprehended.

Vide order dated 22.04.2015 on the principle of parity, the present petitioner was ordered to be released on bail.

Consequently, challan was presented and the applicant faced the trial. Also, it is submitted that thereafter an FIR bearing No.246 dated 30.10.2017 under Sections 379 and 411 IPC Police Station Ghall Khurd, District Ferozepur was registered against the present petitioner and on account of this, he could not make appearance before the trial Court. To show his bonafides, learned counsel for the petitioner has placed on record the copies of various orders passed by learned trial Court, which have been certified by learned counsel himself.

It is further submitted that the petitioner is in custody since 26.03.2019 and the conclusion of trial is likely to take time. As such, a prayer has been made for grant of regular bail.

On the other hand, learned State Counsel resists the claim for grant of regular bail and submits that the petitioner has been declared proclaimed person. Therefore, looking at his conduct, learned State Counsel submits that the petitioner is not entitled to bail, as chances of his abscondance are there.

Perusal of the various orders, which have been placed on the record, reveals that during the pendency of the trial, the present petitioner jumped bail on 26.10.2017. Thereupon, non-bailable warrant of the petitioner was issued for 13.12.2017, as evident from the order dated 22.11.2017 (Annexure P-3 colly). On 12.12.2017, warrant was received back with the report that he had been lodged in Central Jail, Ferozepur, in case bearing FIR No.246/2017 under Section 379 IPC and his production warrant was issued for 04.01.2018, on which date he was not produced and again production warrant was issued for 15.01.2018. On 15.01.2018, non-bailable warrant was issued by the trial Court, which was received back with the report that the petitioner is an absconder. Proclamation was thereafter ordered to be issued, which was duly effected, as observed in the order dated 21.02.2018 and the case was ordered to be adjourned for the next date

for awaiting the presence of the accused-petitioner herein, as the statutory period of 30 days had not elapsed. However, vide order dated 26.03.2018, it came to the notice that non-bailable warrant of the accused was received back with the report that he is lodged in Central Jail, Ferozepur, in case bearing FIR No.246/2017 under Section 379 IPC.

In view of the same, an observation was made that even though, production warrant qua Sukhchain Singh was to be issued, but inadvertently non-bailable warrants were issued and thereupon proceedings under Section 82 Cr.P.C. were recalled by the trial Court, vide order dated 26.03.2018 and production warrant were ordered to be issued again. However, on the next date i.e. 09.04.2018, production warrant were received back with the report that accused-petitioner, Sukhchain Singh, is not in Central Jail, Ferozepur and production warrant was again ordered to be issued for 01.05.2018. However, vide order dated 05.06.2018, again an observation was made by the trial Court about the written proclamation under Section 82 Cr.P.C. against Sukhchain Singh to have been duly executed and the case was adjourned for recording statement of the serving head constable. Vide order dated 13.07.2018, the petitioner-Sukhchain Singh was declared proclaimed person.

Perusal of the aforesaid orders reveals that learned trial Court has not conducted the proceedings in a proper manner. The custody certificate, which was been placed on record, also reveals that in FIR No.246 dated 30.10.2017 under Sections 379 and 411 IPC, Police Station Ghall Khurd, District Ferozepur, the petitioner was released on bail on 28.11.2017, from which it is evident that he was in custody in the aforesaid FIR, during the period of his absence in ibid FIR bearing No.146 dated 26.08.2014 after he had missed one date during course of trial.

Moreover, it is now stated that fellow accused, namely, Kharak Singh, who had also been declared proclaimed offender, had already been granted bail by the trial Court vide order dated 16.05.2020 (Annexure P-4). Even, the other co-accused, namely, Satnam Singh, Gursewak Singh and Amandeep Singh, are also on bail.

Considering the aforesaid fact situation, the present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned.

(ARCHANA PURI)
JUDGE

07.06.2021
himanshu

Whether speaking/reasoned : Yes

Whether reportable : No