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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.46811 of 2019 (O&M)

Date of decision: 18.08.2021

Satnam Singh @ Satta

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Tarun Sharma, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.0180 dated 15.10.2018 registered under Sections 395, 397 of the Indian Penal Code, 1860 (in short 'IPC'), Sections 25/27 of Arms Act (Sections 302, 120-B IPC added later), at Police Station City Muktsar, District Sri Muktsar Sahib.

Counsel for the petitioner, at the very outset, has relied upon the order dated 19.01.2021 passed in CRM-M No.18932 of 2020, vide which 04 of the co-accused of the petitioner namely Simranjit Singh @ Simarjit Singh @ Simra, Harpreet Singh @ Happy, Dilbagh Singh @ Bagha and Sandeep Singh, were granted the concession of regular bail. The operative part of the said order, reads as under:-

“Learned counsel for the petitioners submit that as per allegations in the FIR, registered on the statement of complainant Gurcharann Singh, he was working as

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Supervisor on a petrol pump. On the date of occurrence, he along with deceased Gagandeep Singh, Manager of the petrol pump, were taking Rs.9.90 lacs on a scooter having registration No.PB-03AB-8500. One Narinder Kumar was following them. When they reached at Yadgari Gate, three persons sitting in a car and two persons standing outside, came in front of their scooter and hit the car and both the complainant and Gagandeep Singh fell down. From the said persons, one person fired three shots from the revolver. First fire hit the left leg of complainant Gurcharan Singh and other fire hit on the thigh of Gagandeep Singh. Thereafter, some other persons gave baseball blows to them and they suffered injuries. In that process, the accused persons succeeded in snatching the bag containing Rs.9.90 lacs and ran away in the car. Thereafter, Narinder Kumar call other persons from the petrol pump and got both the injured admitted in the hospital, where Gagandeep Singh died.

Learned counsel for the petitioners further submit that on the basis of some test identification parade, Gurcharan Singh identified the accused persons, whereas mother of the deceased namely Saroj Rani identified petitioner Dilbagh Singh @ Bagha as a person, who was having acquaintance with her deceased son Gagandeep Singh. It is further submitted that now the statements of two of the prosecution witnesses i.e. PW1 Barish Kumar @ Kala and PW2 Gurcharan Singh, complainant/eye-witness have been recorded. It is stated that PW1 Barish Kumar @ Kala has resiled from his statement that none of the accused has made any extra-judicial confession before him. Learned counsel have relied upon the statement of complainant/eye-witness PW2 Gurcharan Singh, who has specifically stated that he had seen accused Dilbagh Singh @ Bagha, Harpreet Singh @ Happy, Akashdeep Singh @

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Akash, Sandeep Singh @ Sandeep, Satnam Singh @ Satta, Simranjit Singh @ Simra through video conference in the Court as well as Saraj Singh-accused, who was present in the Court and they are not the same persons, who were in the Swift car or snatched Rs.9.90 lacs from him and committed murder of Gagandeep Singh or caused injuries to him. Thereafter, the Public Prosecutor requested the Court to declare this witness hostile and he was granted permission to cross-examine this witness. In the cross-examination by the Public Prosecutor, this witness has further denied that he has made any supplementary statement dated 17.09.2019, which was put to him. He further denied that any test identification parade was conducted in his presence and out of 12 persons, PW2 Gurcharan Singh and Saroj Rani identified the accused persons, who were present in the Court. This witness further denied a suggestion that in test identification parade, he has stated that accused Akashdeep Singh @ Akash fired two shots from his revolver, out of which one hit on the chest of Gagandeep Singh and other hit on the thigh of PW2 Gurcharan Singh. In the cross-examination by the defence counsel, this witness further stated that Narinder Kumar, Sweeper reached the hospital after the occurrence.

Learned counsel for the petitioners have argued that in the absence of any supporting evidence from PW1 Barish Kumar, before whom, the accused persons had made extra-judicial confession and PW2 Gurcharan Singh having not supporting the version, the only evidence against the petitioners is their own extra-judicial confession, which was made in the earlier FIR No.43, therefore, it will be a debatable issue whether the same is admissible or not. It is also argued that the police has not conducted scientific investigation, as no call details of the

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accused persons, at the time of occurrence was collected to show that they were present at the spot. It is next argued that even there is no report from the FSL to suggest that the licensed arm recovered from Harpreet Singh (licence in favour of his father) was in fact used in the commission of offence. It is thus argued that there is no corresponding FSL report to prove this fact. It is further argued that gun was deposited with armoury, which was recovered by the police.

Learned State counsel, on the basis of affidavit of Inspector Bhupinder Singh, State Crime Zone, Bathinda filed in the Court today, has, however, opposed the prayer for bail on the ground that the petitioners, during the investigation of first FIR, have disclosed about commission of offence. It is submitted that the Swift car and a firearm was recovered from the accused persons along with some amount, which was robbed from the victims. However, a perusal of the affidavit shows that there is no reference to any call details/location of the petitioners at the time of incident at the place of occurrence and even there is no reference that the firearm, which was recovered, was ever sent to FSL for seeking opinion that it was used in the commission of offence.

After hearing learned counsel for the parties, without commenting upon merits of the case, going through the affidavit of the Investigating Officer and considering the fact that the petitioners are in custody for the last 01 year and 08 months; PW1 Barish Kumar and PW2 Gurcharan, complainant/eyewitness have not supported the prosecution version, I deem it appropriate to grant regular bail to the petitioners. Accordingly, all these four petitions are allowed and petitioners Simranjit Singh @ Simarjit Singh @ Simra, Harpreet Singh @ Happy, Dilbagh Singh @ Bagha and Sandeep Singh are directed

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to be released on regular bail subject to furnishing their bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaq Magistrate, concerned.

Petitions stand disposed of.”

Counsel for the petitioner has submitted that as per the allegations in the FIR, the petitioner has caused injury No.4 with a wooden baseball bat.

Counsel for the petitioner has argued that till now, out of 45 PWs only 02 PWs have been examined. It is further submitted that the petitioner is in custody for the last 02 years, 03 months and 21 days and the trial is not likely to conclude. It is also argued that it is a case based on extra judicial confession and 02 witnesses i.e. PW-1 and PW-2, have not supported the prosecution version.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail. However, it is submitted that the petitioner was arrested in another FIR No.43 and thereafter, he was arrested in the present FIR. It is also submitted that Rs.10,000/- was recovered from the petitioner.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 02 years, 03 months and 21 days; PW-1 and PW-2, have not supported the prosecution version; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time due to COVID-19 situation, this 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.

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However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

**(ARVIND SINGH SANGWAN)
JUDGE**

18.08.2021

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No