

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-37879-2021 (O & M)****Date of decision: 11.10.2022**

Sawan @ Tuti

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Umesh Aggarwal, Advocate, for the petitioner.

Mr. Jiteshwar Singh, AAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.81 dated 12.03.2021 under Sections 302, 148, 149, 506 and 120-B IPC and Sections 25/27 of the Arms Act registered at Police Station Ranjit Avenue District Amritsar.

2. The present FIR came to be registered at the instance of Dilbagh Singh, who stated that he was an Auto Driver and had two sons. His elder son was Jashanbir Singh @ Jassi and younger son is Sachinbir Singh. Chanchal @ Kala, Sunny Paddar, Dani, Tuti (petitioner), Daddu and Sajan Teela were holding a grudge against his elder son-Jashanbir Singh @ Jassi because of some arguments that had taken place earlier and had given threats to kill the said Jashanbir Singh @ Jassi. A few days prior to the occurrence, they had come to his house but his elder son was not present there and these youths had told him that they intended to kill his son and they went away after issuing threats. On 11.03.2021, at about 7.45 p.m., he (complainant) alongwith his younger son-Sachinbir Singh and elder son-Jashanbir Singh @

Jassi departed from their house on motorcycle and were going to his in-laws house at Navi Abadi. His elder son Jashanbir Singh @ Jassi was on his motorcycle in front of them and younger son-Sachinbir Singh was behind him on the said motorcycle. Meanwhile, Chanchal @ Kala, Sunny Paddar, Tuti (petitioner), Dani, Daddu and Sajan Teela were standing on the street. Chanchal @ Kala and Daddu were holding pistols in their hands. Sunny Paddar, Tuti and Dani raised a *lalkara* that '*they had found Jashanbir Singh @ Jassi and he ought to be killed*'. Thereafter, Chanchal @ Kala fired a shot, which struck Jashanbir Singh @ Jassi in the chest whereas Daddu fired a shot which struck Jashanbir Singh @ Jassi on the back. He fell down and on a hue and cry being raised, the accused fled away from the spot. The deceased-Jashanbir Singh @ Jassi was thereafter taken to the hospital by him and his son (complainant and his younger son-Sachinbir Singh).

3. The learned counsel for the petitioner contends that no injury has been attributed to the petitioner and the role attributed to him is of having raised a *lalkara*. The petitioner is in custody since 24.04.2021 and pursuant to the recording of the statement of Dilbagh Singh -complainant, an application under Section 319 Cr.P.C. was moved, and therefore, the trial has been further delayed and is not likely to be concluded anytime soon. Thus, the petitioner ought to be granted the concession of bail, moreso, when none of the 24 prosecution witnesses have been examined so far.

4. The learned counsel for the State, on the other hand, contends that the petitioner was a part of the unlawful assembly, and therefore, does not deserve the concession of bail, though, he admits that the role attributed to the petitioner is of having raised a *lalkara*. He further contends that the petitioner is an accused in three other FIRs, and therefore, his criminal antecedents do not entitle him to the grant of regular bail.

5. I have heard the learned counsel for the parties at length.

6. Admittedly, the two accused, who allegedly shot at the deceased are Chanchal @ Kala and Daddu. The petitioner and his co-accused, namely, Sunny Paddar and Dani are stated to have raised a *lalkara*. An application under Section 319 Cr.P.C. was moved, which had been allowed. Pursuant to the same, no prosecution witnesses have been examined so far as co-accused Shamsher Singh and Sajjan Kalyan have not been produced by the Jail Authorities before the Court as is apparent from the Zimni order dated 30.08.2022, 20.09.2022 and 06.10.2022. The aforesaid orders are taken on record as Mark 'A'. Therefore, all the 24 prosecution witnesses remain yet to be examined.

So far as the other cases are concerned, in FIR No.50 dated 06.05.2018 under Sections 411 IPC, registered at Police Station-B Division, Amritsar, the petitioner stand acquitted vide judgment dated 22.01.2020 passed by the Judicial Magistrate Ist Class, Amritsar, whereas in FIR No.323 dated 23.11.2020 under Sections 399 and 402 IPC and Section 25/27 of the Arms Act registered at Police Station Division-B, District Police Commissionerate, Amritsar and FIR No.118 dated 09.04.2020 under sections 21/29 of the NDPS Act and Sections 269, 270 IPC and Section 51 of the DMA Act, registered at Police Station Sadar, Amritsar, the petitioner has been granted the concession of anticipatory bail.

The Hon'ble Supreme Court in "***Maulana Mohd. Amir Rashadi versus State of U.P. and another, 2012(1) R.C.R.(Criminal) 586***", and this Court in "***Rajender Singh versus State of Haryana***", CRM-40431-2021 in CRA-D-1640-DB-2014", has held that criminal antecedents alone are not sufficient to deny bail to an accused and the evidence available in each case ought to be seen as well.

7. In view of the above, the further incarceration of the petitioner is not required. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Sawan @ Tuti, is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

8. The petitioner shall appear on the first Monday of every month before the local police station till the conclusion of the trial and furnish an affidavit each time that he is not involved in any crime other than the cases referred to hereinabove.

9 In addition, the petitioner (or someone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

(JASJIT SINGH BEDI)
JUDGE

October 11, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No