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

Date of decision: 22.08.2022

1. CRM-M No.22477 of 2022 (O&M)

Sombir

....Petitioner

Versus

State of Haryana

....Respondent

2. CRM-M No.34239 of 2022 (O&M)

Sunil Kishore @ Sonu

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rajesh Nain, Advocate
for the petitioner (in CRM-M-22477-2022)

Mr. Vishwajeet, Advocate
for the petitioner (in CRM-M-34239-2022)

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in these 2nd petitions is for grant of regular bail to the petitioners namely Sombir and Sunil Kishore @ Sonu under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.42 dated 16.02.2021 under Sections 387, 307, 120-B IPC (Section 216 IPC added later) and Section 25 of Arms Act, registered at Police Station Kalayat, District Kaithal.

Counsel for the petitioners have submitted that the new ground for filing these petitions is that the petitioner namely Sombir is

in custody for the last 01 year and 06 months and the petitioner Sunil Kishore @ Sonu is in custody for the last 01 year 05 months and 16 days and the complainant has been examined and he has not identified any person in the trial Court.

Counsel for the petitioners have further submitted that after recording the statement of the complainant, one another accused namely Sanjay @ Sonu is granted the concession of regular bail on 03.08.2022 passed in CRM-M No.33105 of 2022. The operative part of the said order, reads as under:-

Learned counsel for the petitioner submits that new ground for filing this second petition is that the petitioner is in custody for the last 01 year, 05 months and 10 days and complainant Shekhar, who appeared as PW1, has not supported the prosecution version.

Brief facts of the case are that FIR was registered on a complaint given by Shekhar that he is a running a readymade garments shop. About one and half months prior to the incident, he received a call on his mobile phone from one person Raju, who introduced himself as member of Parveen @ Binny gang and demanded Rs.15.00 lacs as ransom from him. When the complainant showed his inability to pay the money, he threatened him of dire consequences. After 2-3 days, a person came on his shop and disclosed his name as Sonu, who also informed that he is member of aforesaid gang and took away clothes from him on the pretext that same are required for Parveen @ Binny. On 16.02.2021, when the complainant was standing outside his shop, a vehicle came, in which a person sitting on the rear seat, rolled down the window glass and fired a shot aiming the complainant, however, he rescued himself and a bullet hit on the stairs. Thereafter,

occupants of the car fled away.

Learned counsel for the petitioner has submitted that the petitioner is first offender; he is not involved in any other case and he has been roped in by citing him as member of Parveen @ Binny gang, who is an accused in multiple cases. Learned counsel has referred to statement of complainant/PW1 Shekhar, who has not supported the prosecution version, as given in the FIR. When he was asked to identify the accused persons namely Subhash, Ram Lal @ Ramu, Ram Niwas, Virender @ V.K. Baba, Kapil, Rajesh, Sunil, Satish, Abhishek, Raju, Sombir, Sanjay (petitioner), Aniket, Ajay and Parveen @ Binny, he stated that none of the accused has fired shot from any country-made pistol nor any attempt was made for extorting money. This witness was declared hostile by the Public Prosecutor and was cross-examined by him. In cross-examination, when he was confronted with his complaint forming basis of FIR Ex.P1, he denied having made such statement before the police and even denied the averments of the FIR regarding the earlier incident, when he received a phone call or when the accused came to his shop and took away clothes for main accused Parveen @ Binny. Even one more witness SI Satpal, who registered the formal FIR, has also been examined. It is thus submitted that since the complainant himself is already examined, there is no possibility of tempering with the prosecution evidence and remaining witnesses are official witnesses.

Learned State counsel, on instructions from ASI Jasbir Singh, who has sent the report, has, however, opposed the prayer for bail on the ground that allegation against the petitioner in the FIR with regard to extorting money, followed by firing incident, are there, however, as per custody certificate, filed in the Court today, it is not

disputed that the petitioner is in custody for the last 01 year, 05 months and 10 days; he is first offender and is not involved in any other case. It is also not disputed that PW1 complainant Shekhar has neither supported the prosecution version nor identified any of the accused, while deposing on oath.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering aforesaid facts and circumstances of the case, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate, concerned.”

Counsel for the petitioners have further argued that the petitioners were nominated in the case on the basis of the disclosure statement of the co-accused namely Rajesh @ Raju that they were also involved in the present case.

Counsel for the State has filed the affidavit of the Investigating Officer in the Court, which is taken on record.

Counsel for the State has submitted that the petitioner Sombir was arrested on 22.02.2021 along with other accused namely Kapil and thereafter, Section 216 IPC was added. It is also submitted that the petitioner Sunil @ Sonu got recovered a mobile phone which was used for communicating with the main accused Rajesh @ Raju.

Counsel for the State further, on instructions from ASI Paras, has argued that though both the petitioners are involved in some other cases, however, he could not dispute that the complainant has not identified both the accused as noticed above.

Without commenting anything on merits of the case,

considering the fact that the petitioner Sombir is in custody for the last 01 year and 06 months and the petitioner Sunil Kishore @ Sonu is in custody for the last 01 year 05 months and 16 days; the complainant has not identified any person in the trial Court; the co-accused of the petitioner is already released on bail; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time, both these petitions are allowed and the petitioners namely Sombir and Sunil Kishore @ Sonu, are directed to be released on bail subject to their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

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

A photocopy of this order be placed on the file of other connected case.

(ARVIND SINGH SANGWAN)
JUDGE

22.08.2022

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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No