

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-42411-2022
Date of decision : 27.10.2022

Akshay Kumar

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Arn timer Sood, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, Sr.DAG, Punjab.

VIKAS BAHL, J.(ORAL)

Present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in FIR No.150 dated 20.07.2020, under Sections 302, 307, 324, 323, 427, 148, 149 and 120-B IPC (Section 325 IPC has been added later on), registered at Police Station Mahilpur, District Hoshiarpur.

Learned counsel for the petitioner has submitted that petitioner has been in custody since 23.02.2021 and the challan has already been presented and there are total 34 prosecution witnesses, none of whom have been examined, thus, the trial is likely to take time. It is further submitted that in spite of issuance ofailable warrants against complainant Seema Rani and the alleged eye witnesses, they are not appearing, thus, the trial is being delayed. It is argued that a perusal of the FIR would show that the petitioner is not named in the same and complainant Seema Rani had

specifically mentioned that it was on account of enmity that co-accused Soni, Kulwinder Kaur, Mandeep Kaur, Sonu and Ravi, Kamaljit Kaur and her husband Charan Dass after hatching conspiracy, had inflicted injuries upon the two sons of the complainant and one of them, namely, Deepak Kumar had died and the other son Shiv Shant had been injured. It is further argued that out of the persons who have been specifically named in the FIR, Sonu, Kuldeep Kaur and Mandeep Kaur have been exonerated by the police and other persons have not been arrested as yet. It is submitted that after a delay of 10 days from the date of occurrence and 9 days from the registration of the FIR, the statements of Tirath Singh and Baljeet Singh under Section 161 Cr.P.C. were recorded on 29.07.2020 and it is the case of the prosecution that the said two witnesses are the eye witnesses of the occurrence. Reference has been made to the statement of Baljeet Singh (Annexure P-4) to highlight the fact that the present petitioner has not been named in the same. The statement of Tirath Singh dated 29.07.2022 (Annexure P-3) has also been referred and in the said statement, the name of several persons including petitioner Akshay Kumar has been mentioned. It is further submitted that even in the said statement, no specific injury has been attributed to petitioner Akshay Kumar and there is no explanation, as to why, the said Tirath Singh and Baljeet Singh, who have alleged themselves to be the eye witnesses, had not given their statements for a period of 10 days following the date of the occurrence. It is further submitted that a perusal of the postmortem report shows that although, the deceased had suffered seven injuries, but injuries No.2, 3, 5 were abrasions, whereas, only injury No.1 was a fatal injury, thus, it has been highlighted that in the present case, a net has been cast wide to include a large number

of persons, although from the injuries suffered also, it is apparent that 15 persons could not have been involved in the alleged incident. It is further submitted that even the injured Shiv Shant had suffered four injuries and three out of the said four injuries were declared to be simple in nature and only one injury was declared to be grievous in nature. It is also submitted that on the basis of the above-said facts, more so, considering the custody period undergone by the petitioner, he deserves the concession of regular bail. It is stated that co-accused of the petitioner namely Teja has been granted concession of regular bail by this Court vide order dated 21.09.2022 passed in CRM-M-42690-2022.

Learned State counsel, on the other hand, has opposed the present petitions for regular bail and has submitted that in the present case, one person has died and one person has been injured and the eye witness Tirath Singh, who got his statement recorded on 29.07.2020, had specifically named the petitioner as one of the persons who had participated in the occurrence. Learned State counsel has further submitted that the police had gone to the hospital for recording the statement of injured Shiv Shant and the doctors had stated that he was unfit for recording the statement, thus, his statement could only be recorded on 30.07.2020, when he got discharged.

Learned counsel for the petitioner, in rebuttal, has submitted that the statement of injured Shiv Shant has been recorded on 30.07.2020, after a period of 10 days from the date of registration of the FIR and a reference has been made to the MLR dated 19.07.2020 to show that the said Shiv Shant was stated to be conscious, cooperative well oriented to time, place and person, vitals normal, B/L pupillary reflex normal on 19.07.2020

itself. It is further submitted that even as per the said statement of Shiv Shant, he had also specifically named Gurpreet Singh and Parminder Singh as the persons who had collected many boys at his house and further the name of the present petitioner had been mentioned by stating that the name of the petitioner and some other co-accused had been informed to him by Baljeet Singh and Tirath Singh and thus, it is not the said injured, who had stated that he had seen the present petitioner commit the alleged offence.

This Court has heard learned counsel for the parties and gone through the paper-book.

Petitioner Akshay Kumar is in custody since 23.02.2021 and the challan has already been presented and there are total 34 prosecution witnesses, none of whom have been examined, thus, the trial is likely to take time. The petitioner is stated to be not involved in any other case. A perusal of zimni orders dated 01.07.2022, 27.07.2022 and 18.08.2022, would show that complainant Seema Rani and injured Shiv Shant are not appearing before the Court in spite of issuance ofailable warrants against them. The said zimni orders are reproduced as under: -

"STATE OF PUNJAB VS GURPREET SINGH etc.

Present: Addl. Public Prosecutor for State assisted by Sh. Savinder Singh Saini, Adv
Accused Gurpreet Singh @ Gopi in custody (not produced through VC Hoshiarpur) represented by Sh. RP Dhir, Adv.
Accused Sukhpreet Singh, in custody (not produced through VC Hoshiarpur) represented by Sh. JBS Gill, Adv
Accused Teja Singh & Akashdeep in custody (not produced through VC Hoshiarpur) represented by Sh. Vikram Bhalla Adv. Free legal aid counsel And Sh. Pankaj Bedi Adv.
Accused Jaskamalpreet Singh & Roshan in custody (not produced through VC Hoshiarpur) represented by Sh. Pankaj Bedi Adv.
Accused Parminder Singh in custody (not produced through VC Hoshiarpur) represented by Sh. Vikram Bhalla and NS Maan, Adv
Accused Akshay in custody (not produced through VC

Patiala) represented by Sh. Pankaj Bedi Adv.

Accused produced by the jail authorities through VC. They be again produced on 27.07.2022 through VC. Retired Inspector Sukhwinder Singh is present but not examined as prosecution wants to examine eye witnesses first. Please discharge for time being.

Summon issued to PW Seema Rani and Shivshant received back served. But they have not come present. Letailable warrants of these witnesses be issued for 27.07.2022. Remaining pws be summoned for the date fixed.

*Date of Order: 01.07.2022
Diksha Rani-Steno*

*(Jatinder Pal Singh Khurmi)
Additional District and Sessions Judge
UID NO . PB00057"*

"STATE OF PUNJAB VS GURPREET SINGH etc.

Present: Addl. Public Prosecutor for State assisted by Sh. Savinder Singh Saini, Adv

*Accused Gurpreet Singh @ Gopi in custody (not produced through VC Hoshiarpur) represented by Sh. RP Dhir, Adv
Accused Sukhpreet Singh, in custody (not produced through VC Hoshiarpur) represented by Sh. JBS Gill, Adv
Accused Teja Singh & Akashdeep in custody (not produced through VC Hoshiarpur) represented by Sh. Vikram Bhalla Adv. Free legal Aid Counsel And Sh. Pankaj Bedi Adv.
Accused Jaskamalpreet Singh & Roshan in custody (not produced through VC Hoshiarpur) represented by Sh. Pankaj Bedi Adv.*

*Accused Parminder Singh in custody (not produced through VC Hoshiarpur) represented by Sh. Vikram Bhalla and NS Maan, Adv
Accused Akshay in custody (not produced through VC Patiala) represented by Sh. Pankaj Bedi Adv.*

Accused not produced by the jail authorities through VC. Let production warrants of accused be issued for 18.08.2022.ailable warrants of Seema Rani and Shiv Sant were executed but they have not turned up. Let they be summoned through nonailable warrants for 18.08.2022.

*Date of Order: 27.07.2022
Diksha Rani-Steno*

*(Jatinder Pal Singh Khurmi)
Additional Sessions Judge/Hoshiarpur
UID No. PB-00057 "*

"STATE OF PUNJAB VS GURPREET SINGH etc.

Present: None for the State.

*Accused Gurpreet Singh @ Gopi in custody (not produced through VC Hoshiarpur) represented by Sh. RP Dhir, Adv
Accused Sukhpreet singh on bail with Sh. JBS Gill, Adv
Accused Teja Singh & Akashdeep in custody (not produced*

through VC Hoshiarpur) represented by Sh. Vikram Bhalla Adv. Free legal Aid Counsel And Sh. Pankaj Bedi Adv. Sh. Pankaj Bedi Advocate for the accused Jaskamalpreet Singh Accused Roshan in custody (not produced through VC Hoshiarpur) represented by Sh. Pankaj Bedi Adv. Accused Parminder Singh in custody (not produced through VC Hoshiarpur) represented by Sh. Vikram Bhalla and NS Maan, Adv Accused Akshay in custody (not produced through VC Patiala) represented by Sh. Pankaj Bedi Adv.

As per the report of Ahlmad, accused Jaskamalpreet Singh and Sukhpreet Singh have furnished bail bonds and bail order dated 03.8.2022 received and attached.

Accused not produced by the jail authorities through VC. Let production warrants of accused be issued for 13.09.2022.

An application has been filed for exemption of personal appearance of accused Jaskamalpreet Singh and the same is allowed for today in view of the averments made in the application

Nonailable warrants issued against pw Seema Rani and Shivshant received back with the report of ASI Neeraj Kumar that due to law and order duty, he could not execute the warrants. To procure the presence of witnesses, let fresh nonailable warrants issued against pw Seema Rani and Shivshant be issued for 13.09.2022.

Date of Order: 18.08.2022

*(Jatinder Pal Singh Khurmi)
JSC/Hoshiarpur
UID No. PB-00057"*

A perusal of the FIR would show that the complainant had specifically stated that it was on account of enmity that Soni, Kulwinder Kaur, Mandeep Kaur, Sonu and Ravi, Kamaljit Kaur and Charan Dass after hatching a conspiracy, had inflicted injuries upon her sons. Out of said persons, who had been specifically named in the FIR, three persons, namely, Soni, Kuldip Kaur and Mandeep Kaur have been declared as innocent and some of the persons named therein have not been arrested as yet and after a delay of 9 days of registration of the FIR and 10 days from the date of the incident, the statements of Baljeet Singh and Tirath Singh have been recorded, who are stated to be the eye witnesses. A perusal of the said

had not been named in the same. Further, the statement of Tirath Singh (Annexure P-3) would also show that against petitioner Akshay Kumar, there is no specific attribution and he had been named along with a large number of other persons. There is nothing stated in the said statements so as to explain why the same had been given by Baljeet Singh and Tirath Singh, who are alleged to be the eye witnesses, after a delay of 9 days from the registration of the FIR and 10 days after the date of the alleged incident. A perusal of the MLR of the injured Shiv Shant would show that he had been stated to be conscious, cooperative well oriented to time, place and person, vitals normal on 19.07.2020 itself, yet his statement had been recorded on 30.07.2020 i.e., after a delay of 10 days. Even as per the statement dated 30.07.2020 (Annexure P-2) he had stated that he had made enquiries at his personal level after the alleged incident had occurred on 19.07.2020 and he came to know that before the incident, Gurpreet Singh son of Joginder Pal had come to enquire about welding of a bed from him, but he did not get the bed and after some time, several persons came to the shop of the injured and had committed the illegal act. It is further stated that he had come to know that Gurpreet Singh had informed Parminder Singh about the presence of the injured at the shop and at that time, Parminder Singh, along with several other persons, had arrived there and inflicted injuries upon him and his brother. As far as the name of the present petitioner is concerned, he had stated that it was the aforesaid Baljeet Singh and Tirath Singh, who had informed him about the involvement of the petitioner along with several other persons. Thus, as per the statement of Shiv Shant, it was not Shiv Shant who had himself seen the petitioner commit the alleged crime. No motive to commit the said crime has been alleged against the present

petitioner. The co-accused of the petitioner namely Teja has already been granted concession of regular bail by this Court vide order dated 21.09.2022 passed in CRM-M-42690-2022

Keeping in view the above-said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which is only for the purpose of adjudicating the present bail petition.

It is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

(VIKAS BAHL)
JUDGE

October 27, 2022

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No