

CRM-M-4322-2023 (O&M)

106+216 (1st case)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-4322-2023 (O&M)

Date of decision: August 16, 2023

Karan Kumar

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Karandeep S. Sidhu, Advocate for petitioner.

Ms. Guramrit Kaur, DAG Punjab.

Mr. Mandeep Singh, Advocate for complainant.

ARUN MONGA, J. (ORAL)**CRM-33369-2023**

For the reasons stated in application, same is allowed. Correct translated copy of opinion dated 07.09.2022 as Annexure P-8 is taken on record, subject to all just exceptions.

Main case (O&M)

After being declined bail by the trial Court, petitioner seeks his release as undertrial in a case bearing FIR No.232 dated 02.09.2022, registered under Sections 458, 326, 506, 148 read with Section 149 of the Indian Penal Code, 1860 (for short 'IPC') (Section 307 of IPC added later on), at Police Station, City Malout, Tehsil Malout, District Sri Muktsar Sahib.

2. Per prosecution version, on 02.09.2022, at about 7.30 PM, Rohit Kumar armed with knife, Manav Kumar armed with Kirpan, Karan Kumar (petitioner) armed with knife, Chahat Kumar armed with Kirch, Akshay Kumar armed with baseball bat and two unidentified persons armed with *Dangs* along with Bonny Kumar and Nimmo Rani, who were both empty handed, came to meet Sumit Kumar (complainant) and Rajan Kumar. Heated altercation took place and Rohit Kumar gave knife blow in the stomach of Rajan Kumar. Manav Kumar gave sword blow on the chest of Rajan Kumar, while petitioner also gave knife blow to Rajan Kumar on the left side of his chest. Chahat

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Kumar gave sword blow on the left bicep and Akshay Kumar gave baseball bat blow on the left shoulder of Rajan Kumar. One of the unidentified person gave *Dang*blow, which hit on his right wrist. Rajan Kumar then fell on the ground and raised alarm '*Marta Marta*', which attracted people. Then all the said persons along with their respective weapons fled away from the spot. Later on, when the Doctor declared injuries No.1, 2 and 4 as dangerous to life as per MLR, offence under Section 307 IPC was added vide Rapat No.71 dated 07.09.2021. During investigation, petitioner was arrested on 09.09.2022 and is in custody ever since.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated. He further submits that alleged injury No.5, attributed to the petitioner, has been opined to be simple one. He contends that petitioner was not armed with any weapon. He did not even cause any alleged injury to the victim, even though it is stated to be simple as per MLR. Learned counsel further urges that nothing is to be recovered from the petitioner and no useful purpose would be served by keeping him behind bars.

3.1. Learned counsel for petitioner states that on the statement of complainant, FIR was initially registered rightly under Section 326 of IPC. However, subsequently, only to make the offence look more grave, though of-course on the basis of medical report dated 07.09.2022 (Annexure R-1/T), Section 307 of IPC was invoked. Further states that in any case, investigation is complete and allegation attributed to the petitioner will be adjudicated in course of trial which is yet to commence.

3.2. Learned counsel further contends that co-accused of the petitioner, namely Vishal @ Krishan Kumar, Ankush, Nirmala Devi and Mohit @ Bonny have already been granted the concession of bail by learned Court below vide orders dated 08.12.2022, 14.10.2022 and 26.10.2022, respectively, but petitioner continues to languish in the jail. Case of the petitioner is on better footing than them, he contends.

4. On the other hand, learned State counsel, on instructions from ASI Jagir Singh, opposes the petition. She submits that petitioner along with other co-accused have committed a serious offence. She though admits that there is no other case against the

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petitioner. If enlarged on bail again, there is every likelihood that he might tamper with evidence or influence/ intimate the witnesses and flee from trial proceedings.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

6. In the medical report *ibid*, opinion with regard to injuries caused to the victim has been given. Same reveals that *MLR Injury No.5 was simple*. Injury no.5 is attributed to the petitioner. On a Court query, learned State counsel submits that challan has been presented on 08.12.2022, but charges are yet to be framed. Investigation *qua* petitioner is complete, he is thus not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against petitioner are a matter of trial at this stage. Conclusion of trial is still likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for the past more than 11 months in preventive custody, being behind bars since 09.09.2022.

7. Petitioner is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/or influence witnesses. There is no probability of tampering with evidence as the same has already been seized by the investigating agency.

8. It is stated that petitioner is 19-year old young boy, who is undergraduate student and has to look after his parents. He is in the cross-road of his career and his continued incarceration will permanently ruin his chances to earn livelihood and he may be rendered jobless forever. Having fixed abode and clean antecedents, it is unlikely that petitioner poses any flight risk and/or will flee from trial proceedings.

9. Co-accused of petitioner have already been granted the concession of bail.

10. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.

11. Accordingly, petitioner is ordered to be released on bail, in case not required in any other case, on his furnishing bail bonds and surety bonds to the

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satisfaction of learned trial Court, where his case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

12. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for limited purpose of bail hearing alone and learned trial Court shall proceed without being influenced with this order.

13. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 16, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No