

2023:PHHC:118239

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

CRM-M-8201-2023

Date of Decision: 25.07.2023

Omkar Singh @ Gabbar

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Sandeep Kumar Passi, Advocate
for the petitioner.

Mr. Vipin Pal Yadav, Addl. A.G., Punjab.

HARSH BUNGER J.

1. Petitioner (Omkar Singh @ Gabbar) has filed this second petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case bearing FIR No.219 dated 03.11.2020 (Annexure P-1), under Sections 148, 149 & 307 of the Indian Penal Code and Sections 25 & 27 of the Arms Act (Section 302 of the Indian Penal Code, added later on), registered at Police Station Dharmkot, District Moga, Punjab.

2. Earlier bail petition (CRM-M-521-2023) filed under Section 439 of the Code of Criminal Procedure, on behalf of the petitioner for grant of interim bail for a period of three weeks, was dismissed as withdrawn vide order dated 16.01.2023 passed by this Court.

3. Short reply by way of affidavit dated 01.06.2023 of Mr. Ravinder Singh, P.P.S., Deputy Superintendent of Police, Dharamkot, District Moga, has been filed on behalf of State of Punjab, which is already

on record.

4. Briefly, the aforesaid FIR was registered on the complaint of Gaggi Singh son of Shinda Singh, wherein he stated that he drives a tractor-trolly for transporting sand with Jagsir Singh son of Pal Singh resident of Village Rerwa. It is alleged that on 02.11.2020, at about 9:30 P.M., he along with Harbans Singh son of Balbir Singh had gone to leave the tractor-trolly of Jagsir Singh at his house and after leaving the same, he saw Harbans Singh, Manpreet Singh son of Gurdeep Singh, Petta and Jagsir Singh son of Pal Singh, Pal Singh son of Nazar Singh standing on the road in front of house of Jagsir Singh. It is alleged that in the light of electric bulb, he saw Nikka Singh son of Kala Singh along with two unknown boys coming from Sherpur Taiba side on motorcycle (Platina) bearing registration No.PB-29-AA-3455, who stopped near complainant party. In the meanwhile, one more motorcycle (CT 100), being driven by Kulwinder Singh son of Karnail Singh, came from Rerwa side along with Gabbar Singh (petitioner) son of Kala Singh and Kala Singh, being the pillion riders, which stopped near the complainant. It is alleged that all the aforesaid persons started abusing the complainant party. It is further alleged that Kala Singh was armed with 12 bore gun, Nikka Singh was carrying pistol and the remaining persons were also carrying *kirpans* and baseball bats. Thereafter, Kala Singh is alleged to have raised a *lalkara* stating that today Jagsir Singh, Pal and Gaggi Singh be taught lesson for filling sand in their trolly from the sand pits of Village Sangera and he (Kala Singh) fired a shot from his gun with an intention to kill Pal Singh, who fell down after being hit by the gunshot. It is alleged that thereafter, Kala Singh fired another shot to kill the complainant and the pellets of same hit the complainant's leg. Nikka Singh is alleged to have fired shot from his pistol

with an intention to kill Jagsir Singh and resultantly, complainant and Jagsir Singh got injured because of the fire shots and fell down. The complainant party is stated to have raised alarm, whereupon all the accused persons ran away from the spot along with their respective weapons and motorcycles. Thereafter by arranging a vehicle, the injured were admitted in the Civil Hospital, Moga, from where they were referred to Guru Gobind Singh Medical College, Faridkot.

5. As per FIR (Annexure P-1), the reason for occurrence is stated to be a heated discussion that broke out a week back between the complainant party and the accused party with regard to filling up of sand from the sand pits of Village Sangerha, to which the accused persons were not agreeing.

6. As per status report, Jagsir Singh son of Pal Singh, who was one of the injured, is stated to have died and accordingly, offence under Section 302 of the Indian Penal Code was added in the instant case vide DDR No.16 dated 15.11.2020. It is further mentioned that during investigation, Kala Singh @ Sukhchain Singh was arrested on 16.11.2020 and he got recovered 12 bore gun used by him in the occurrence. On 24.11.2020, Gagandeep Singh @ Nikka Singh surrendered before the Court and got recovered country made .315 bore pistol. During the course of investigation, accused Kulwinder Singh joined the investigation on 01.04.2021, in compliance of order passed by this Court and similarly, Nirmal Singh joined the investigation on 30.04.2021, in compliance of order passed by this Court. It appears that earlier a challan was presented against Sukhchain Singh and Gagan and subsequently, supplementary challan was presented on 08.07.2021 against Kulwinder Singh and Nirmal Singh. It is further made out in the status report that during investigation, no evidence came on record

to connect Lovepreet Singh and Nishan Singh with the crime and accordingly, they were declared innocent. It is further mentioned that the present petitioner had concealed himself and was accordingly declared a proclaimed offender vide order dated 09.09.2021, however later on, it was learned that he was confined in custody in another case FIR No.130 dated 04.08.2022, registered under Sections 21-B, 27 and 29 of the Narcotic Drugs and Psychotropic Substances Act, at Police Station Sardulgarh, whereupon the petitioner was formally arrested in the instant case on the basis of production warrants and thereafter, supplementary challan was presented against him in Court on 20.12.2022 and charges were framed on 31.03.2022.

7. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the present case. It is contended that the petitioner has not been named in the FIR, however, the complainant with *mala fide* intent has later on named the petitioner as Gabbar in the complaint whereas he has not committed the alleged crime. Learned counsel for the petitioner submits that in fact the petitioner was in custody in another case FIR No.130 dated 04.08.2022, and he was arrested in the instant case on the basis of production warrant. It is stated that even as per FIR, no injury has been attributed to the petitioner and another co-accused, namely Kulwinder Singh and Nirmal Singh, have been granted anticipatory bail by a co-ordinate Bench of this Court vide separate orders dated 20.08.2021 passed in CRM-M-8920-2021 (Annexure P-3) and passed in CRM-M-15496-2021 (Annexure P-4).

8. Learned counsel submits that the petitioner had applied for grant of regular bail before the Court of Sessions Judge, Moga, which was wrongly declined vide order dated 06.02.2023. It is stated that the petitioner is in custody in this case since 21.09.2022; investigation of case is complete,

challan stands submitted and even charges have been framed, hence, conclusion of trial will take some time and no useful purpose would be served with further incarceration of the petitioner. Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail is made.

9. Per contra, learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence by submitting that one person has lost his life in the occurrence. He further submits that the petitioner does not have clean antecedents as he is involved in three more cases. Learned State counsel submits that in fact the petitioner was declared as a proclaimed offender in the instant case as he had concealed himself, thus in case he is released on bail then he might influence the witnesses and also abscond and delay the trial.

10. Learned State counsel has also raised the submission that when the petitioner earlier approached this Court to seek bail by filing the petition bearing CRM-M-521-2023, therein the petitioner tried to get the concession of interim bail from this Court by producing false invitation card of alleged marriage of his sister, which during investigation was found to be false, and before the submission of report, the petitioner withdrew the said petition on 16.01.2023. Accordingly, dismissal of the instant petition is prayed for.

11. I have heard learned counsel for the parties and perused the paper book as well as status report with their able assistance.

12. In the instant case, the petitioner is booked for serious offences as three persons, namely Jagsir Singh, Pal Singh and Gaggi Singh, had sustained injuries in the occurrence. As per MLR No.AG/93/2020 of Jagsir Singh, he sustained one fire arm shot and KUO; MLR No.AG/94/2020 of

Pal Singh depicted that he sustained five fire arm shots; and as per MLR No.AG/95/2020 of Gaggi Singh, he sustained five fire arm shots. Out of the said three injured, Jagsir Singh is stated to have died. Petitioner has been specifically named in the present FIR (Annexure P-1). Further, it appears that the petitioner was earlier declared as a proclaimed offender in this case and he does not have clean antecedents as he is involved in three more cases, being FIR No.84 dated 19.07.2013, FIR No.51 dated 05.04.2021 and FIR No.130 dated 04.08.2022.

13. Furthermore, when the accused is facing serious charges, he may develop temptation to jump the bail. The apprehension expressed by the State counsel that if released on bail, there is every likelihood of the petitioner trying to tamper with the prosecution evidence by giving threats and inducement to the prosecution witnesses and absconding even to prolong the trial, cannot be brushed aside lightly.

14. Hence, keeping in view the gravity and nature of the offence, I do not deem it fit to extend the concession of regular bail to the petitioner. Accordingly, the present petition is dismissed.

15. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

16. All pending application(s), if any, shall also stand closed.

25.07.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No