

CRM-30143-2023 IN/AND
CRM-M-10199-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-30143-2023 IN/AND
CRM-M-10199-2023 (O&M)
Date of decision: July 25, 2023

Wasakha Singh @ Dholu

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Kanwaljeet Singh Brar, Advocate for applicant-petitioner.

Ms. Guramrit Kaur, DAG Punjab.

Mr. Dhruvinder Brar, Advocate for complainant.

ARUN MONGA, J. (ORAL)

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For the reasons stated in application, same is allowed. Copy of charge sheet dated 15.02.2023 as Annexure P-3 is taken on record, subject to all just exceptions.

Main case (O&M)

At the outset, learned counsel for petitioner states that per charge sheet dated 15.02.2023 (Annexure P-3), petitioner has been additionally charged for commission of offence punishable under Section 460 of the Indian Penal Code, 1860 (for short 'IPC') as well. On his oral request, Section 460 IPC is added in the head note as well as prayer clause of the petition. Registry to carry out necessary amendments accordingly.

2. Petitioner seeks bail in case bearing FIR No.169 dated 26.09.2022, registered under Sections 459, 380, 511, 323 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') (Sections 459, 325 and 460 of IPC added later on and Section 458 of IPC deleted), at Police Station Talwandi Sabo, District Bathinda, Punjab.

3. According to the prosecution's account, during the night of 25th/26th September 2022, at approximately 1:00 a.m., three individuals armed with iron rods unlawfully entered the home of the complainant with the intention of committing theft.

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Wife of the complainant heard the noise and discovered that two of the intruders were rummaging through the belongings in the room. She raised an alarm, prompting the complainant to wake up. At that moment, the third assailant, wielding a weapon similar to an iron rod, struck the complainant's head twice. In self-defense, the complainant bit the left hand finger of the said assailant, causing the loss of his tooth. Subsequently, all the assailants fled from the scene. An FIR was lodged. The petitioner was later apprehended as a suspect and is in custody since 2nd October 2022.

4. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case as there is previous history of enmity between family of co-accused Balwinder Singh, who is friend of petitioner and nephew of the complainant. He further submits that without carrying out any test identification of the accused, merely on self-serving statement of an interested witness i.e., nephew of the complainant, petitioner has been implicated as an accused in the FIR in question. The whole version of the prosecution is fabricated. Allegations against the petitioner are vexatious. He further submits that petitioner was not even present at the spot when the alleged occurrence happened. He has nothing to do with the alleged offence. FIR was registered against unknown persons. Nothing was recovered from the petitioner.

5. On the other hand, learned State counsel, assisted by learned counsel for complainant, opposes the bail petition. Learned State counsel, on instructions from Inspector Gurdeep Singh submits that petitioner has committed serious offence. There are two more cases against the petitioner. If enlarged on bail, petitioner may tamper with the evidence and/ or influence the witnesses.

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

7. On a Court query, learned State counsel points out that challan was filed and charges were framed on 17.01.2023. Being so, since trial has commenced, thus petitioner is not required for any further custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against

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petitioner are a matter of trial at this stage. There are total 15 witnesses in the case, out of them only 4 have been examined so far. Trial is likely to take a long time as it is proceeding at a snail pace. Whereas, petitioner has already been in jail for the past more than 9 months in preventive custody, he being in custody since 02.10.2022. Petitioner is being kept in judicial custody on the unfounded apprehension of tampering with the evidence and/ or influencing the witnesses.

8. Petitioner is stated to be sole bread winner with the added responsibility to look after his old aged parents who are living in penury, in his absence. Being a person with family responsibilities, he poses no flight risk.

9. 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.

10. 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 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.

11. In case, petitioner is found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.

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

July 25, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No