

2023:PHHC:061563

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 01.05.2023

1. CRM-M-10218-2023 (O&M)

Suraj @ Gharu

... Petitioner

Vs.

State of Punjab

... Respondent

2. CRM-M-11220-2023 (O&M)

Rahul Sandhu @ Akash Duda

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. S.P.S. Sidhu, Advocate
for the petitioner (in CRM-M-10218-2023).

Mr. Rahul Arora, Advocate
for the petitioner (in CRM-M-11220-2023).

Mr. Teevar Sharma, AAG, Punjab.

Mr. Vikram Satpal Anand, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in these 2nd petitions for grant of regular bail to petitioners Suraj @ Gharu and Rahul Sandhu @ Akash Duda, in FIR No.115 dated 07.10.2018 under Sections 302, 307, 341, 427, 148, 149, 120-B IPC and Sections 25/27 of Arms Act, registered at Police Station Cantt. Ferozepur, District Ferozepur.

First petitions filed by petitioners Suraj @ Gharu and Rahul Sandhu @ Akash Duda were dismissed as withdrawn on 05.02.2020 and 23.08.2021 respectively.

New grounds for filing these second petitions are that the petitioners are in long custody of about 04 years and 04 months and some of similarly situated co-accused have already been granted the concession of regular bail.

Learned counsel for the petitioners, at the very first instance, have relied upon the order dated 13.02.2023 passed in CRM-M-36073-2021 and CRM-M-43467-2022, vide which co-accused Ankush @ Jojo and Manual @ Chucha have been granted the concession of regular bail. The operative part of the order reads as under: -

“At the very outset, learned counsel for the petitioners have relied upon the order dated 08.09.2022, vide which co-accused Maniual @ Mema was granted the concession of regular bail. The

operative part of the order reads as under: -

“Learned counsel for the petitioner has submitted that the petitioner has been in custody since 05.11.2018 (03 years, 10 months and 03 days) and there are 36 witnesses, out of which, only 9 have been examined and thus, the trial is likely to take time. It is further submitted that although, the present petitioner has been arrayed as an accused in a case of double murder, but as per the prosecution's case, the petitioner is neither named in the FIR nor is stated to be at the spot when the occurrence had taken place nor he has been attributed any injury. It is submitted that the occurrence had taken place on 06.10.2018 and FIR has been registered on 07.10.2018 and thereafter, since the petitioner, who was not even involved in the present incident was repeatedly being called to police station, thus, the petitioner along with other persons, filed petition for grant of anticipatory bail in the Court of the Additional Sessions Judge, Ferozepur, who, vide order dated 31.10.2018, dismissed the said application as having been rendered infructuous on the statement made by ASI Balbir Singh to the effect that the petitioner and other persons were not the accused persons in the FIR and were not required for investigation. Further direction was given to police authorities to issue a two days' prior notice in case, they chose to arrest the petitioner. It is contended that immediately thereafter, on 01.11.2018, the statement of one Montu Gill was recorded, who had stated that one of his known persons had disclosed to him that the present petitioner and other persons were doing recce

(reconnaissance) of the whereabouts of the deceased and had informed the main accused about the presence of the said deceased persons. It is submitted that the said Montu Gill has been examined as PW-3 and in his cross-examination, he has stated that it was one Arjun, who had informed him regarding the same. It is argued that the statement of Arjun has not been recorded nor he was produced as a witness in the present case. It is submitted that other than the said statement of Montu Gill, there is no other evidence against the petitioner and no recovery has been effected from him.

Learned counsel for the complainant and learned State counsel on the other hand, have opposed the present petition for regular bail and have submitted that the present case is a case in which two persons have lost their lives and have submitted that as per the statement of Montu Gill, it was the petitioner and other persons, who were informing the main accused about the whereabouts of the deceased, which helped the main accused to arrive at the place of occurrence and seriously injure the two persons namely, Harjinder Singh and Sonu, which resulted their death. It is submitted that the petitioner is involved in one more case under the Prisons Act although, other facts have not been disputed.

*Learned counsel for the petitioner in rebuttal has relied upon the judgment of Hon'ble Supreme Court in **“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”**, reported as 2012 (2) SCC 382 to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of*

the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

This Court has heard learned counsel for the parties and has perused the paper book.

In the present case, the petitioner is in custody since 05.11.2018 (03years, 10 months and 03 days) and there are 36 witnesses, out of which, only 9 have been examined, thus, the trial is likely to take time. The petitioner is not named in the FIR nor is stated to have inflicted any injury on any person nor is stated to be armed with any weapon. The incident in the present case occurred on 06.10.2018 and the FIR was registered on 07.10.2018 and a perusal of the order dated 31.10.2018 (Annexure P-3) would show that in the anticipatory bail application filed by the petitioner along with other persons, ASI Balbir Singh had made a statement that the petitioner and other persons had not been arrayed as accused persons in the FIR and were not required for investigation and accordingly, the said application was dismissed as having been rendered infructuous with a direction given to the police authorities to issue a two days' notice before arresting the petitioner. It is the case of the prosecution that the statement of one Montu Gill was recorded, who in his statement stated that the petitioner and

other persons were doing recce and were informing the main accused about the whereabouts of the deceased persons. The said Montu Gill has been examined as PW-3, who deposed that he had been disclosed about the above-said fact regarding the recce done, by Arjun son of Channa. It is not in dispute that no statement of Arjun has been recorded under Section 161 Cr.P.C. nor he is a witness in the present case. The question whether the petitioner could be convicted on the basis of statement of Montu Gill (PW-3) or not, would be a moot question and would be decided during the course of trial.

*Keeping in view the above said facts and circumstances and in view of the law laid down in **Maulana's** case (supra), the present petition is allowed and the petitioner is 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.”*

For the sake of brevity, facts are not reproduced again.

Learned counsel for the petitioner Manual @ Chucha submits that the petitioner was not named in the FIR and his name was surfaced in the disclosure statement of one Vicky @ Samual. It is further submitted that primary allegations against the petitioner are that he has conducted some recci and no direct attribution is made against the petitioner. It is also submitted that the petitioner is in custody for the last 03 years, 10 months and 10 days.

Learned counsel for the petitioner Ankush @ Jojo submits that the petitioner was nominated in the FIR on the basis of disclosure statements of two persons namely Sunil and Rohit and has relied upon their statements, who appeared as PW10 and PW11 and have not supported the prosecution version with regard to the petitioner. It is further submitted that even as per the FIR, the petitioner was not seen by these two persons following other accused on a bullet motorcycle. It is also submitted that both these witnesses were declared hostile by the Public Prosecutor and even in the cross-examination, they have denied the statements made before the police. It is next submitted that the petitioner is in custody for the last 03 years, 05 months and 18 days.

Learned State counsel, assisted by learned counsel for the complainant and on the basis of affidavit of the Inspector/SHO, Police Station Ferozepur Cantt., submitted that petitioner Manual @ Chucha and Maniual @ Mema (who has already been granted the concession of regular bail) had conducted the recci and helped the accused persons to commit the offence. It is further submitted that petitioner Ankush @ Jojo was named by aforesaid two persons, who have seen him following a bullet motorcycle driven by some unknown persons, as he was pillion rider on the said vehicle. It is also submitted that as many as 11 prosecution

witnesses have already been examined including the complainant and the eyewitness.

In reply, learned counsel for the petitioners submit that since the private witnesses already stand examined, there is no possibility of tempering with the prosecution evidence, as only the official witnesses remain to be examined.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering the fact that aforesaid co-accused of the petitioners has already been released on regular bail and also in view of the fact that two the prosecution witnesses i.e. PW10 Rohit and PW11 Sunil have not supported the case qua petitioner Ankush @ Jojo and considering long custody of the petitioner and stage of the trial, which is likely to take some time in conclusion, both these petitions are allowed and petitioners Ankush @ Jojo and Manual @ Chucha are directed to be released on regular bail subject to furnishing their bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.”

Learned counsel for petitioners submit that only allegation petitioner Suraj @ Gharu is that he has given a blow on the car of Chamkaur Singh, whereas allegation against petitioner Rahul Sandhu @ Akash Duda is that while on scooter, he has given a blow.

Status report by way of affidavits of SHO, Police Station Cantt. Ferozepur along with custody certificates, filed in the Court today, are taken on record. In the affidavits, after verifying the facts of the FIR again, which are reproduced in the aforesaid order, it is stated that during investigation, it was found that in Tata Safari bearing registration No.HR-60A-7898, petitioner Suraj @ Gharu was there and had actively participated in commission of offence. It is further stated that charges were framed on 10.06.2019 and as on today, 20 prosecution witnesses have already been examined including complainant Jagsir Singh @ Jagga, who appeared as PW1, eyewitness Chamkaur Singh appeared as PW2 and one Montu Gill appeared as PW3.

Learned counsel for the petitioners submit that all the material witnesses have already been examined, therefore, there is no possibility of tempering with the prosecution evidence. It is further submitted that both the petitioners are in custody for the last 04 years, 03 months and 23 days and it will take long time in conclusion of the trial.

Learned State counsel, assisted by learned counsel for the complainant, could not dispute about role of the petitioners as well as the fact that two aforesaid co-accused have already been released on regular bail.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering the aforesaid facts and circumstances of the case and the fact that the petitioners are in long custody of about 04 years and 04 months; stage of the trial and also in view of judgment of

the Hon'ble Supreme Court in **Satender Kumar Antil Vs. Central Bureau of Investigation and anr., SLP (Crl.) No.5191 of 2021, decided on 11.07.2022**, both these petitions are allowed and petitioners Suraj @ Gharu and Rahul Sandhu @ Akash Duda are directed to be released on regular bail subject to furnishing their bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.

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

[ARVIND SINGH SANGWAN]
JUDGE

01.05.2023

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No