

CRM-M-11472-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

105/219

CRM-39533-2023 in/and
CRM-M-11472-2023 (O&M)

Date of decision: 10.10.2023

Lakhvir Singh @ Baggi

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Anantdeep Singh Sandhu, Advocate for
Mr. L.S. Lakhanpal, Advocate for the petitioner.

Mr. Mohit Thakur, AAG Punjab.

ARUN MONGA, J. (Oral)

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Application is allowed as prayed for. Documents are taken on record as Annexures P-3 and P-4 respectively, subject to all just exceptions.

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Following the denial of bail by learned trial court, the petitioner is now before this court seeking his release as an undertrial in a case with FIR No. 208 dated 12.11.2018, registered under Sections 302, 307 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 25 and 27 of the Arms Act, 1959 at the Baghapurana, Police Station in Moga.

2. FIR was lodged based on the statement of the complainant, Gurjit Singh. He alleged that on November 12, 2018, at around 4:30 p.m., he and his father were on their way to the doctor to get medicines. While en route, they saw Gurjit's brother, Avtar Singh, also known as Golu, standing outside Surjit Singh Mistri's house with his friends. Meanwhile, three individuals arrived on a motorcycle, one of them wearing a kurta pajama, and began firing at Gurjit's brother and his friend, Avtar Singh, alias Tar. One of the assailants remained on

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the motorcycle, while the other two got off and started firing shots from their pistols. Consequently, Gurjit's brother ran towards Surjit Singh Mistri's house, where he was fired upon four to five times. The three assailants then fled the scene, uttering abuses and firing shots into the air. When Gurjit entered Surjit Singh's house, he found his brother lying on the ground, bleeding from his injuries. His brother was rushed to Faridkot Medical College but succumbed to his injuries on the way.

2.1. During the investigation, Sukha Singh, also known as Sukhdool Singh, Sony, Lakhvir Singh, alias Baggi (the petitioner), Nirmal Singh, alias Nimma, Jagsir Singh, alias Seera, and Lakhwinder Singh were named as accused. The motive behind the incident was alleged to be revenge for beatings suffered in jail, with Baltej Singh conspiring with accused Sukha Singh, alias Sukhdool Singh, to murder Gurjit's brother, Avtar Singh, alias Golu.

3. To begin, the petitioner's counsel points out that complainant Avtar Singh, whose statement has already been recorded as PW-10 by the learned trial Court (contained in Annexure P-4), did not support the prosecution's version and turned hostile. Based on this, the petitioner's counsel argues that given the complainant's testimony, now on record, and his lack of cooperation, it seems unlikely that the petitioner will be convicted, with a high probability of acquittal.

3.1. On the merits of the case, the counsel asserts that the FIR was originally filed against unknown persons, and the petitioner has no connection to the alleged offense. The petitioner's counsel further claims that the petitioner is innocent and has not committed any offense. He contends that the FIR's version is fabricated, and the petitioner is not linked to the alleged offense.

3.2. Furthermore, the petitioner's counsel argues that there is no substantial evidence against the petitioner, and nothing incriminating is to be recovered from him. It is also mentioned that the charge sheet has already been

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submitted, and the trial is expected to take a considerable amount of time. Consequently, it is argued that there would be no benefit in keeping the petitioner in custody.

4. The learned State counsel opposes the petitioner's bail application, expressing concerns about the possibility of the petitioner fleeing from trial proceedings if granted bail. He submits that petitioner has committed serious offence and has played an active role in the incident. If enlarged on bail, there is every likelihood that petitioner will commit similar offence and/or will flee from trial. The State counsel does not dispute that the facts that complainant has not supported the prosecution case and that petitioner is not involved in any other case.

5. I have heard the rival arguments and reviewed the case file.

6. In response to a query from the Court, it transpires that the investigation against the petitioner has been completed, and charges were framed on July 28, 2022. At this stage, the allegations against the petitioner are subject to trial. Of the thirty four prosecution witnesses, fifteen have been examined so far. The trial is anticipated to take a considerable amount of time. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since December 06, 2018, for more than four years and ten months.

7. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that he might tamper with evidence or influence witnesses.

8. Petitioner is stated to be 28-year old unmarried person and is a labourer by profession with the additional duty of caring for his ailing parents. He is the sole provider for his family, which is currently living in dire poverty in his absence. As a responsible family man with a stable residence and clean

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antecedents, the petitioner is unlikely to pose a flight risk or evade trial proceedings.

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

10. Accordingly, petitioner is ordered to be released on bail 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 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. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits the case as the same are for the 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

October 10, 2023
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No