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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 12.09.2023

Avtar Singh alias Tara alias Dosanj

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Ms.Sukhpreet Kaur Grewal, Advocate for the petitioner.
 Mr. Shubham Kaushik, AAG Punjab.
 Mr. Amaninder Singh Sekhon, Advocate for the complainant.

ARUN MONGA, J. (Oral)

After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.31 dated 30.03.2014, registered under Section 302, 392, 506, 148 read with Section 149 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 25 and 27 of the Arms Act, 1959 at Police Station, Jaito, District Faridkot.

2. Per prosecution case, complainant Sohan Singh reported the incident in question that occurred on March 30, 2014. He stated that he, along with his brother Sukhpal Singh, his cousin Sukhwinder Singh, and Maninder Singh's son, were returning from their fields on two motorcycles. When they reached a location near a petrol pump around 8:40 am, they were ambushed by three individuals, namely Gurbaksh Singh, Gursharanjit Singh, and Harjinder Singh, who were armed with pistols and riding motorcycles. They were also accompanied by several other individuals, including Ginder Singh, Roop Singh, Kulwant Singh, Goldi Singh, Nachhattar Singh, Raman Singh, Swaranjit Singh, Skattar Singh, and three to four other unidentified persons. Upon disembarking from their vehicles, Gurbaksh Singh, Gursharanjit Singh, and Harjinder Singh started to fire gunshots at Maninder Singh's son and Sukhpal Singh. Maninder Singh's son was struck and fell to the ground. Subsequently, when Sukhpal Singh attempted to flee, Gurbaksh Singh fired a shot at him, causing him to collapse in a nearby wheat field. The

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perpetrators then fled from the scene. Maninder Singh died on the spot, while Sukhpal Singh succumbed to his gunshot injuries in the hospital. FIR was registered.

2.1. In the course of investigation, on the statement of one Hardeep Singh, recorded on 04.06.2014, petitioner was also nominated as an accused. Offences under Sections 120-B and 341 IPC were also added. Petitioner was declared a proclaimed offender on 15.03.2016. Challan against remaining accused was presented. Later on, petitioner being in custody in some other case, was produced on production warrants on 27.11.2020 and was arrested. After completion of investigation, challan under Section 173(8) Cr.P.C. against him was also presented on 17.02.2021.

3. Learned counsel for the petitioner relies upon testimony of PW-14 Hardeep Singh, on whose disclosure statement, petitioner was implicated as a suspect. She submits that during the course of his testimony before the Court, he has not supported the prosecution version. Copy of the testimony of PW-14 Hardeep Singh, is taken on record as Annexure A-1. Further submits that petitioner has been falsely implicated in the present case. She asserts that petitioner was already in custody in connection with some other case since 2016. As a result thereof, petitioner could not appear before the court below and was, thus, wrongly declared proclaimed offender in the present case.

3.1 She further contends that motive for committing the alleged murder is attributed to one Sukhjinder Kaur i.e., mother of the main accused Gurbaksh Singh. Further submits that petitioner was neither named in the FIR nor attributed any injury. Moreover, nothing is to be recovered from petitioner.

3.2 Further submits that it is highly unbelievable that complainant, who was present at the spot when the alleged occurrence took place, but never tried to intervene to save the life of his son and younger brother, which in fact creates doubt over his version.

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3.3 Further states that co-accused have been accorded concession of bail by coordinate Bench of this Court vide order dated 01.12.2015, 13.08.2020 and 22.09.2015, contained at Annexures P-3 to P-5.

3.4 Further submits that challan has already been presented. Conclusion of trial will take long time. Thus, no useful purpose would be served by keeping the petitioner behind the bars.

4. Per contra, learned State counsel, assisted by learned counsel for complainant, opposes the bail petition. He submits that petitioner has committed a serious offence and as such he is not entitled to concession of bail. He further contends that petitioner along with other accused committed the murder of son and brother of the complainant in broad day light and does not deserve the concession of bail. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice as he is involved in a number of other cases of similar nature. He further submits that custody in the present case has not started yet and per custody certificate dated 26.07.2023 of petitioner already on record, benefit of undertrial period in this case has not been given w.e.f. 01.12.2020 till date since petitioner was convicted on 20.08.2019 in some other case bearing FIR No.50 of 2015.

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

6. On a Court query, learned State counsel, on instructions from ASI Iqbal Singh, challan has already been presented. Investigation is complete, petitioner 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. Trial has commenced and out of total 38 witnesses, 22 have been examined so far. Conclusion of trial is still likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has

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already been languishing in jail for the last more than 06 years and 10 months, being in custody since 16.10.2016, though in some other case.

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 a 33-year old family person and having fixed abode. It is unlikely that petitioner is flight risk and/or will flee from trial proceedings.

9. Considering the overall scenario and 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 in instant case.

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. 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 hearing the instant bail petition 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

September 12, 2023
Ajay

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