

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision:13.09.2023

....Petitioner

Versus

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Mr. Mohit Thakur, AAG, Punjab.

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.124 dated 06.07.2020, registered under Sections 302, 452, 307, 324, 323, 427, 120-B IPC and Sections 25, 27 of Arms Act, 1959 at Police Station, Nathana, District Bathinda.

2. Initially, an FIR was registered on July 6, 2020, against six named individuals: Amritpal Singh, Hardeep Singh (also known as Deepa), Tari Singh, Harjinder Singh (also known as Jindu), Balwinder Singh (also known as Pajama), and Satpal Singh (also known as Sattu), along with some unidentified individuals. The complaint was lodged by Kulwinder Singh (alias Lalli). He alleged that the accused had conspired to trespass into his house. They killed his cousin, Sukhraj Singh, and injured both Kulwinder Singh and his associates while also attempting to kill them. Kulwinder Singh informed the police that he was at home with his family when Amritpal Singh and Hardeep Singh arrived there on a motorcycle. Tari Singh, armed with a hockey stick, was accompanied by Jindu, Pajama, Satpal Singh, and around 10 or 11 unidentified individuals who were armed with swords, hockey sticks, and baseball bats. They vandalized their house. Pajama fired a shot from his pistol at Mehakdeep Singh, and Amritpal also fired shots at him, causing injuries. Hockey sticks were used to inflict head and left arm injuries. Tari struck his wife, Veerpal Kaur, in the face with a sword. As Sukhraj Singh approached the house, he too was injured by the assailants. The attackers fled the scene after making threats. Sukhraj Singh later succumbed to his injuries in the hospital.

2.1. During the investigation, on July 14, 2020, Kuldeep Singh was identified as a suspect based on a statement by Thana Singh in DDR No.30. On July 16, 2020 three more individuals—Yadwinder Singh (alias Jimpy), Sukhdev Singh (alias Sona), and Ravi Singh—were added to the FIR based on a statement by Gurmail Singh (PW) in DDR No.28 under Section 161 Cr.P.C.

2.2. In his statement dated July 16, 2020, Gurmail Singh reported that on July 5, 2020, around 4:00 p.m., he was cycling towards Lahera Bega. While taking rest near the drain bridge, he observed the accused individuals, armed with weapons, on motorcycles and cars, along with 5-6 unidentified persons with covered faces in each vehicle. Gurmail Singh was already familiar with the other accused individuals. He later learnt about the incident in which Sukhraj Singh was killed and other individuals on the complainant's side were injured.

2.3. During the investigation, co-accused Yadwinder Singh (alias Jimpy), Sukhdev Singh (alias Sona), and Surya Pal (alias Satpal) were found to be innocent. However, incriminating evidence emerged against the remaining seven accused, including the petitioner. The petitioner was thus subsequently arrested on July 21, 2020.

3. Learned counsel for the petitioner argues that petitioner was named in the present case belatedly merely on the basis of statement of Thane Singh i.e. an interested witness, being father of complainant Kulwinder Singh. Petitioner has thus been falsely implicated in the present case. Neither petitioner was present at the scene of occurrence nor injury has been attributed to the petitioner. Petitioner was thus not even named in the FIR, and rightly so.

3.1 He further submits that petitioner is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/ or influencing prosecution witnesses. Further contends that out of 56 prosecution witnesses, none has been examined. Trial will take some time to conclude as it is proceeding at a snail pace.

3.2 Co-accused have been granted concession of regular bail by a coordinate Bench of this Court vide orders dated 08.04.2022, 28.04.2022, 10.08.2022 and 17.05.2023(Annexures P-4 to P-7).

4. On the other hand, learned State counsel opposes the bail petition. He submits

bail, there are chances of his fleeing from justice. He submits that he is a habitual offender. Apart from the present case, one case under Sections 42, 52 Prison Act is pending against him, though he is on bail in that case. In three other cases (two under Arms Act and one under NDPS Act), he has been convicted.

4.1. In rebuttal, learned counsel for petitioner submits that sentence in two of the cases has already been undergone by petitioner while in the third case, his sentence was suspended on 14.11.2018.

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

6. From prosecution narrative, it emerges that said PW Thane Singh, who named the petitioner, stating that when he was cycling, he had seen petitioner in the company of other accused at a remote place prior to the incident and therefore the presumption of his involvement, is concededly not an eyewitness. He was not present at the scene of occurrence. Even otherwise, petitioner was not named at the very first instance as per the narrative given by the complainant. Furthermore, it transpires that material witness Thane Singh despite having been summoned on numerous occasions did not even turn up in the Court. In fact it turns out that, trial Court has already taken coercive steps to secure his presence and bailable warrants have been issued vide order dated 11.09.2023 to secure his presence on the next date of hearing i.e. 05.10.2023. In the premise, on one hand, trial is getting delayed at the instance of prosecution and/or failure of the appearance of prosecution witness, on the other hand, petitioner continues to languish in jail.

7. On a Court query, under instructions from ASI Chamkaur Singh, learned State counsel informs that after filing of challan, charges were framed way back on 11.12.2020. Out of 56 prosecution witnesses, none has been examined so far.

8. Allegations against petitioner are a matter of trial at this stage. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been languishing in jail for more than 03 years 01 month, being behind bars since 21.07.2020. He 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.

9. Petitioner is stated to be 27-year old family person and is only breadwinner of his family. He has already lost his livelihood due to prolonged incarceration. Petitioner is not flight risk in any manner, given that he has a family to look after and has a fixed abode.
10. Co-accused of petitioner have already been granted the concession of bail by co-ordinate Bench of this Court.
11. 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.
12. Accordingly, petitioner is ordered to be released on bail, if not required in any other case, on his furnishing bail bonds and surety bonds to the satisfaction of Ld. 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.
13. 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.
14. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of 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.
15. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

13.09.2023
vandana

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