

CRM-M-33269-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

226

CRM-M-33269-2023

Date of decision: 05.10.2023

Sukhchain Singh alias Sukhi

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Jagjit Pal Singh Sarao, Advocate for the petitioner through Video conference.

Mr. Karan Garg, AAG Haryana.

ARUN MONGA, J. (Oral)

Following the denial of bail by the learned trial court, the petitioner is now before this court seeking his release as an undertrial in a case with FIR No. 42, dated 04.02.2019, registered under Sections 307, 325, 323, 148 read with Section 149 of the Indian Penal Code and Section 25 of the Arms Act, 1959, Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, at the Cheeka Police Station in Kaithal.

2. As per the First Information Report, complainant Nirmal Singh, son of Rishipal, alleged that on 02.02.2019, a quarrel had taken place between Lakhvinder Singh alias Happy and AmrikBibipur, AmrikKamheri, SukhiPahalwan (petitioner herein), but the same was not reported to the police. On 03.02.2019, at about 05:00 pm, the petitioner, along with other co-accused AmrikBibipur and AmrikKamheri, and others, being members of an unlawful assembly and armed with deadly weapons, i.e., gandasi, danda, and a pistol, and in furtherance of their common object, attacked the complainant and his companion on the road leading from village Tatiana to Badsui near Shamlat land of village Tatiana. The petitioner, armed with a gandasi, struck Gurjeet Singh on the head, while a co-

accused of the petitioner delivered a gandasi blow to his waist. Accused AmrikBibipur struck Gurjeet Singh's arm with a danda, and accused AmrikKamheri inflicted a gandasi blow to his head. Upon raising the alarm, all the assailants fled with their respective weapons and vehicles. The injured parties were admitted to Government Hospital, Guhla, from where they were referred to Rajendra Hospital, Patiala, for treatment. Petitioner was arrested on 07.02.2019.

3. Learned counsel for the petitioner contends that the FIR was registered based on a false, fabricated, and concocted version of the complainant. Moreover, there is an inordinate delay in lodging the present FIR.

3.1 He submits that no recovery is to be effected from the petitioner, and no custodial interrogation is required either. The petitioner has been falsely implicated in the present case. He further submits that the petitioner was arrested on 07.02.2019 but was granted the concession of regular bail by the Court below on 06.06.2019, as per order Annexure P-2. However, due to some miscommunication between his counsel and him, the petitioner could not appear before the Court below on 12.02.2020. Thereafter, there was lockdown due to Covid -19 pandemic. In the melee, petitioner was declared a proclaimed offender on 18.10.2021. He submits that the non-appearance of the petitioner was unintentional. He was arrested on 12.11.2022 and has been in custody since then. Furthermore, he submits that the challan has already been presented, and the conclusion of the trial will take a long time. Thus, no useful purpose would be served by keeping the petitioner behind bars.

3.2. He further submits that the petitioner is a national-level Kabaddi player.

3.3. Co-accused of the petitioner, namely, Nirmal Singh alias Nimma, has been granted the concession of bail by the learned Court below, as per the

order dated 18.01.2023, contained in Annexure P-3. Thus, he is entitled to the concession of bail, is the contention.

4. The learned State counsel opposes the petitioner's bail application on the grounds that the petitioner formed an unlawful assembly and attacked the complainant and others with the intention to kill them. He further submits that the petitioner caused multiple injuries to them. According to him, there is a possibility of the petitioner fleeing from trial proceedings if granted bail.

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. The challan was filed on 30.10.2020. At this stage, the allegations against the petitioner are subject to trial. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. Of the thirty-nine prosecution witnesses, none have been examined so far. The trial's progress has been slow, and it is anticipated to take a considerable amount of time. Whereas, the petitioner has been in detention since November 12, 2022, for almost 11 months.

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

8. The petitioner is stated to be a National Level Kabaddi player, with the additional duty of caring for his elderly, 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, the petitioner is unlikely to pose a flight risk or evade trial proceedings.

9. Co-accused Nirmal Singh alias Nimma has already been granted the concession of bail by the Court below. I see no reason why the petitioner should not be granted similar treatment.

CRM-M-33269-2023

10. 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.

11. 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.

12. 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.

13. 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.

14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 05, 2023

Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No