

2023:PHHC:116491

206

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-M-33971-2023
Date of Decision: 02.09.2023**

Sukhwinder Singh @ Binder

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Ajay Kripal Singh, Advocate
for the petitioner.

Mr. Praveen Chander Goyal, Addl. A.G., Haryana.

HARSH BUNGER J.

1. Petitioner (Sukhwinder Singh @ Binder) has filed this second petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case bearing FIR No.256 dated 18.06.2022 (Annexure P-1), under Sections 323, 324 and 506 of the Indian Penal Code (Sections 307, 325 and 326 of the Indian Penal Code, added later on), registered at Police Station Cheeka, District Kaithal.

2. The first petition filed under Section 439 of the Code of Criminal Procedure (CRM-M-54439-2022) by petitioner was withdrawn at that stage vide order dated 16.02.2023 (Annexure P-8).

3. On 10.08.2023, learned State counsel submitted that vide Rapat

dated 03.10.2022, offence under Section 307 of the Indian Penal Code has been deleted from the instant case. Today, learned State counsel has handed over custody certificate dated 01.09.2023 of the petitioner, which is taken on record, subject to all just exceptions.

4. Briefly, the aforesaid FIR has been registered on the complaint of one Jasbir Singh s/o Dharam Singh, who stated that they are two brothers and name of his elder brother is Satbir Singh; and they have around 7 *kille* of agricultural land. As per the complaint, the land of complainant adjoins the land of Binder (petitioner), who had purchased the said land (measuring 7 kanals) from one Bhagel s/o Hari Singh. It is mentioned in the complaint that the complainant had heated arguments with the petitioner on several occasions with regard to boundary of aforesaid 7 kanals of agricultural land. It is alleged that on 17.06.2022, when the complainant's father was watering the fields then petitioner started a verbal quarrel with him regarding the agricultural land. Thereafter, at around 5:30 P.M. when the complainant reached the fields with his father then on seeing them, the petitioner immediately hit the spade into the head of complainant's father, whereupon the complainant ran and tried to grab the petitioner, however, the petitioner attacked with the spade on the head of complainant, as well, and when the complainant raised his left hand in order to save himself then the spade hit straight on the wrist and little finger of the complainant's hand. Thereafter, the petitioner hit the handle of spade on the back and left knee of the complainant. As per the complainant, when he shouted out for help then the people from neighbouring fields saved the complainant and his father from the petitioner, who took away his spade and threatened the complainant and his father while going by saying that '*you are saved today but in future if you break the boundary then I will kill you*'. Accordingly, legal action was sought

for against the petitioner by the complainant party.

5. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the instant case FIR (Anexure P-1). It is submitted that the complainant party is the aggressor of the alleged incident as the complainant and his father had attacked the petitioner while he was working in his fields, more so, the place of alleged occurrence is the land of petitioner, which can be seen from the site plan (Annexure P-2) prepared by the police while conducting the investigation. Learned counsel for the petitioner states that offence under Section 307 of the Indian Penal Code stands deleted from the instant case, after getting the opinion of Doctor and the challan stands filed under Sections 323, 324, 325 and 506 of the Indian Penal Code. Learned counsel further states that the petitioner has been implicated in this case with *mala fide* intent by the complainant party for the sole reason that the petitioner had purchased the land, in which the complainant party was also interested.

6. Learned counsel for the petitioner contends that earlier when the matter was listed on 10.08.2023 then learned State counsel had submitted that the case is listed before the trial Court for 23.08.2023, when in all probability the complainant/victim would be examined, accordingly the matter was adjourned to 02.09.2023, i.e. today. Learned counsel for the petitioner submits that in fact on 23.08.2023, the complainant moved an application for personal exemption before the trial Court, which was allowed. Learned counsel for the petitioner has handed over a copy of order dated 23.08.2023 passed by the Additional Sessions Judge, which is taken on record, subject to all just exceptions. The same reads as under:-

“ Today the case is fixed for prosecution evidence.
Meanwhile, an application seeking personal exemption on

behalf of complainant Jasbir Singh filed. Heard. In view of reasons mentioned in the application, same is allowed only for today.

One PW EHC Ramesh Kuamr is present and examined as PW-1. Thereafter, learned Public Prosecutor has given up PW Ct. Sunil Kumar present in the court today, being unnecessary. No other PW is present. Summons issued against PW Dharam Singh received back duly served. Despite service, he had not appeared. Hence, bailable warrant be issued against PW Dharam Singh in the sum of Rs.10,000/- with one surety in the like amount as well as afresh summons against PW Jasbir Singh for 06.10.2023.”

7. Learned counsel for the petitioner contends that the petitioner is in custody since 24.07.2022 in the instant case and no other case is pending against him. Investigation in the case is complete and challan stands presented, hence trial in the case is likely to take long time to conclude and no useful purpose would be served with further incarceration of the petitioner. Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court. Learned counsel further submits that the petitioner is also willing to furnish security in the form of Fixed Deposit Receipt (F.D.R.) before the concerned Court, so as to ensure his presence before the Court on each and every date of hearing. Accordingly, prayer for grant of regular bail is made.

8. Per contra, learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. Learned State counsel submits that in case the petitioner is released on bail then he might influence the witnesses and also abscond and delay the trial. Accordingly, prayer for dismissal of the present petition is made.

However, it is not disputed by learned State counsel that the petitioner is in

custody for a period of one year, one month and seven days (as on 01.09.2023) and no other case is pending against him. It is also conceded by learned State counsel that investigation is complete and challan stands filed under Sections 323, 324, 325 and 506 of the Indian Penal Code.

9. I have heard learned counsel for the parties and perused the paper book as well as the custody certificate of petitioner.

10. In the instant case, petitioner is in custody for a period of one year, one month and seven days (as on 01.09.2023) and no other case is pending against him. Concededly, offence under Section 307 of the Indian Penal Code stands deleted in this case vide Rapat dated 03.10.2022 and challan stands filed under Sections 323, 324, 325 and 506 of the Indian Penal Code. Thus, trial in the case is likely to take some time to conclude.

11. So far as the apprehension expressed by learned State counsel that the witnesses could be influenced by petitioner, suffice it to state that in the event of any such conduct, the prosecution can always approach the competent court for cancellation of bail. Accordingly, it is observed that the State/Prosecuting Agency/State police shall be at liberty to observe the behaviour of the petitioner during bail period, and in case it feels that the petitioner is indulging in influencing any of the witnesses or tampering with the prosecution evidence in any manner or otherwise causing interference with the progress of trial, it shall be open for the State/Prosecuting Agency/State police to move the trial Court for cancellation of bail, which shall be decided by the trial Court on merits.

12. In view of the aforementioned facts and circumstances, present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned. However, the concerned

Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The petitioner shall also appear before the concerned Police Station/Station House Officer on every Monday till the conclusion of trial.

13. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.1,00,000/- and submit the same with the trial Court. The same would be liable to be forfeited as per law, in case the petitioner remains absent from trial without any sufficient cause.

14. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

15. The petition is accordingly disposed of.

16. All pending application(s), if any, shall also stand closed.

02.09.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No