

CRM-M-38525 of 2022

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

CRM-M-38525 of 2022
Date of decision: 06.02.2023

Harwinder Singh Brar @ Happy Brar

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. K.S. Brar, Advocate,
for the petitioner.

Mr. Anup Singh, AAG, Punjab.

NAMIT KUMAR, J. (ORAL)

This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No.376 dated 10.10.2020 under Sections 302, 506, 120-B, 148, 149 IPC and Sections 25, 27 of the Arms Act, 1959 (offence under Sections 471, 472, 473 IPC added and Section 25 of the Arms Act deleted lateron), registered at Police Station Zirakpur, District SAS Nagar Mohali.

According to the prosecution, Sunil Kumar made statement before the police that his brother Anil Kumar was doing private work with him. He alongwith his parents had gone for visiting their village Chandpur District Mandi for about 10/12 days. On 09.10.2020 his brother Anil Kumar alongwith his friend Manish Verma who was residing as tenant at Flat No.

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105-B, Block Phase-1, Maya Garden came at VIP Road Zirakpur. Last night around 2-30 AM his friend Amandeep Singh son of Harbans Singh resident of village Sabalpur district Yamuna Nagar Haryana called the complainant. He told that Anil along with his friends went for the celebration of birthday of his other friend Vinay Sharma at play ground Club Sector 26 Chandigarh. Thereafter they had food at Sethan's Dhaba at Zirakpur. They were going on a Fortuner car bearing No. HR-02-AG-0054 to the flat of Manish Verma via VIP Road. When they reached near Shi Shi Complex, then another Fortuner vehicle number PB-04-AC-0053 which was also going in front of their vehicle was overtaken by their vehicle. The driver of the other vehicle chased their vehicle and abused them. He went a little further and parked his car in front of their car and hit it. Two young men and a girl were in the car. Both two young men alighted from the car and threatened to kill and abused them and even punched them. He told his friend Manish about this quarrel. In the meantime his friend Manish and Anil Kumar reached at the spot near Domino's Pizza VIP Road. The above said both the accused persons along with girl went from the spot by threatening them to kill and said that wait a few minutes will show the result to overtake their car. About 10 minutes later, both the young men along with the girl and another red Swift vehicle number of HP in which three-four unknown young men were riding arrived. Both two young men and three-four unknown persons got out from their cars. A young man in the Fortuner car had a pistol and as soon as he arrived, he started abusing them. It will be around 01:35 a.m. when his friend Manish Verma and Anil Kumar stopped the above said accused from abusing him and tried to understand them, then a young man holding a pistol in his hand raised a 'lalkara' that "I am Happy Brar Faridkotia

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(petitioner), I will show you the result”, and all the other unknown persons also raised ‘lalkara’. The accused had given threat to kill them. In the meantime petitioner-Happy Brar Faridkotia had fired 3-4 rounds by the pistol which was in his hand, into stomach of Anil Kumar. Anil Kumar fell to the ground oozing with blood. Thereafter all these young men started beating to him and his friend. When he raised alarm “Marta Marta”, then all the accused persons along with petitioner-Happy Brar Faridkotia fled from the spot in their respective vehicles with their weapons. Thereafter he along with his friend Manish and others rushed to Care Hospital VIP Road for the treatment of his injured friend Anil Kumar, where in the emergency ward the doctor examined his friend Anil Kumar and declared him dead. The dead body of Anil Kumar had been kept at Mortuary House Civil Hospital Dera Bassi. The reason for this act was that the petitioner-Happy Brar had objected to overtaking his vehicle and all the perpetrators have conspired with each other and carried out a deadly attack on them. The complainant was informed by Amandeep Singh and the complainant made his statement before the police. On the statement of complainant, FIR was registered and accused persons were arrested.

On issuance of notice of motion, status report by way of affidavit of Bikramjit Singh Brar, Deputy Superintendent of Police, Sub Division Zirakpur, District SAS Nagar (Mohali), has been filed on behalf of the respondent-State, which is already on record.

Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the present case. He further submits that it is a case of hearsay evidence as complainant was not present at the spot of alleged occurrence. As per FIR Amandeep Singh described

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whole incident to PW-1 Sunil Kumar-complainant. He further submits that challan in the present case has been presented; charges have been framed and out of total 49 witnesses, 10 witnesses have been examined. He further submits that complainant PW-1 Sunil Kumar and eyewitnesses i.e. PW-2 Pranav; PW-3 Simran Singh; PW-4 Himanshu and PW-10 Amandeep Singh have not supported the prosecution version. Learned counsel further submits that the petitioner is in custody since 12.10.2020 i.e. for 02 years and 03 months. He is not involved in any other case. Learned counsel further submits that co-accused of the petitioner, namely, Ramandeep Kaur, Ramesh Kumar, Harjinder Singh Gill @ Soni and Gurlal Singh Brar have been granted regular bail by a Co-ordinate Bench of this Court vide common order dated 19.07.2022 passed in CRM-M-8858 of 2021, CRM-M-9075 of 2021, CRM-M-41561 of 2021 and CRM-M-19456 of 2022 and Lovepreet Singh has been granted regular bail by this Court vide order dated 07.12.2022 passed in CRM-M-36216 of 2022. Next date before the trial Court for prosecution evidence is 17.02.2023. Conclusion of trial is likely to take a considerable time. Therefore, no fruitful purpose would be served by detaining the petitioner behind bars. He may be granted the concession of regular bail.

On the other hand, learned State counsel while placing on record custody certificate, opposed the prayer for grant of bail to the petitioner. However, he does not dispute the fact that petitioners are not involved in any other case and trial is likely to take considerable time to conclude as well as material witnesses have already been examined and have not supported the prosecution case.

I have heard learned counsel for the parties and perused the

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record.

Keeping in view the custody period of the petitioner, which according to the custody certificate is 02 years and 03 months; challan has been presented and charges have been framed; out of 49 prosecution witnesses 10 have been examined; material witnesses have resiled from their statements and have not supported the case of the prosecution; other co-accused, namely, Ramandeep Kaur, Ramesh Kumar, Harjinder Singh Gill @ Soni, Gurlal Singh Brar and Lovepreet Singh have been granted bail; petitioner is having no criminal antecedents and the fact that the trial is likely to take a considerable time to conclude, however, without commenting upon the merits of the case, the petitioner is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

The petition stands disposed off accordingly.

It is made clear that the petitioner shall not extent any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation made hereinabove shall not be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case on the basis of available material independently.

06.02.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No