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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-38555-2023 (O&M)

Date of decision: September 14, 2023

Jaspinder Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Arshdeep Singh Brar, Advocate for petitioner.

Mr. Shubham Kaushik, 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.208 dated 12.11.2018, registered under Sections 302, 307 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') (Sections 450, 148, 149, 120-B of IPC added later on) and Section 25, 27 of the Arms Act, 1959 (for short 'Arms Act'), at Police Station, Baghapurana, District Moga.

2. FIR is based on the complaint of Gurjit Singh, an eye witness. He reported that on 12.11.2018, around 4.30 p.m., three individuals on a motorcycle opened fire at his elder brother, Avtar Singh, also known as Gollu, and his names sake friend Avtar Singh, also known as Taar. Avtar Singh @ Gollu, tried to run away to save himself, but one of the motorcycle occupants still pursued him and fired 4 to 5 shots, resulting in his death. Whereas, Avtar Singh @Taar, sustained injuries in the incident. Petitioner-Jaspinder Singh was later also arrested as a suspect and has been in custody since 17.12.2018.

3. Learned counsel for petitioner contends that there are inherent contradictions in the testimonies of witnesses which have so far been recorded, inasmuch as, it was earlier stated that there were three persons who came to the scene of occurrence and one of them had fired at the deceased, however, subsequently the said statement was changed and it was stated that there were six persons. Pointing out the contradictions, learned counsel for petitioner submits that if the later statement i.e., six persons being involved, is to be believed, then role attributed to the petitioner is on similar footing as that of co-accused. He further submits that co-accused, namely Nirmal Singh has been accorded the benefit of bail vide order dated 21.08.2023, and co-accused, namely Varinderpal Singh @ Veena was granted

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concession of anticipatory bail vide order dated 20.04.2021. Whereas, petitioner continues to languish in jail.

3.1. On a specific Court query as to whether any role has been attributed to the petitioner, learned State counsel, on instructions from ASI Gurcharan Singh, states that role attributed to the petitioner is that of a co-conspirator and not of being present on the scene of occurrence.

3.2. Learned counsel for petitioner also relies on the supplementary statement (Annexure P-2) of eye-witness/ injured, namely Avtar Singh @ Tar in support of his contention that petitioner has not been attributed any role of firing any gun-shot. It was only Lakhwinder Singh and Lakhvir Singh @ Baggi, if at all, who were directly responsible for causing death of the deceased.

3.3. Learned counsel also contends that petitioner and other accused have been named in the FIR on the basis of alleged extrajudicial confession of co-accused, namely Lakhwinder Singh made before injured Avtar Singh alias Taar. The veracity of such statement is *prima facie* doubtful as there was no reason for an accused to go and admit his crime to the injured, especially when there was no other evidence against him. He further contends that it is a case of blind murder. Police, in connivance with injured, have implicated petitioner and others. Statement of injured was recorded after 23 days of occurrence and there is nothing on record to show complicity of petitioner with the alleged murder. Further contends that in any case, investigation is complete and allegation attributed to the petitioner will be adjudicated in course of trial.

4. On the other hand, learned State counsel opposes the petition. He submits that petitioner along with other co-accused have committed a serious offence. If released on bail, there is likelihood of petitioner fleeing from trial proceedings and/or tampering with evidence and influencing witnesses. He further submits that petitioner is involved in five other cases of similar nature.

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 Gurcharan Singh, submits that challan was presented way back on 11.08.2021 and charges were framed on 28.07.2022. Petitioner is not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against

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so far. Conclusion of trial is still likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for the past about 04 years and 09 months, being behind bars since 17.12.2018.

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 34-year old. Having a fixed abode, it is unlikely that petitioner poses any flight risk and/or will flee from trial proceedings.

9. Co-accused of petitioner have been accorded the concession of bail, as aforesaid.

10. 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.

11. 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.

12. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for limited purpose of bail hearing 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 14, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No