

228

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-40531-2023 (O&M)

Date of decision: 04.10.2023

Mandeep Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Kanwaljeet Singh Brar, Advocate for petitioner.

Mr. Mohit Thakur, AAG, Punjab.

Mr. Dhruvinder Brar, Advocate for complainant.

ARUN MONGA, J. (ORAL)

Status report dated 26.09.2023 by way of affidavit of PPS, Deputy Superintendent of Police, Sub Division Talwandi Sabo, Bathinda on behalf of respondent-State of Punjab has been tendered in course of hearing, which is taken on record.

2. After being declined bail by learned trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.169 dated 26.09.2022, registered under Sections 458, 459, 460, 380, 511, 323, 325 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') (Section 459, 325 and 460 IPC added and Section 458 deleted later on) at Police Station, Talwandi Sabo, District Bathinda, Punjab.

3. According to the prosecution's account, on the night of September 25th/26th, 2022, at approximately 1:00 a.m., three individuals armed with iron rods unlawfully entered the complainant's home with the intention of committing theft. The complainant's wife heard the noise and discovered that two of the intruders were rummaging through the belongings in the room. She raised an alarm, prompting the complainant to wake up. At that moment, the third assailant, wielding an iron rod, struck the complainant's head twice. In self-defense, the complainant bit the left-hand

finger of the said assailant, causing the loss of his tooth. Subsequently, all the assailants fled the scene, and an FIR was lodged. The petitioner was later apprehended as a suspect and has been in custody since October 2nd, 2022.

4. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case due to a previous history of enmity between the family of the co-accused, Balwinder Singh, who is a friend of the petitioner and the nephew of the complainant. He further submits that without conducting any test identification of the accused, solely relying on the self-serving statement of an interested witness, i.e., the nephew of the complainant, the petitioner has been named as an accused in the FIR in question. The entire prosecution's version is alleged to be fabricated, and the allegations against the petitioner are vexatious. He further submits that the petitioner was not even present at the scene when the alleged incident occurred and had no involvement in the alleged offense. The FIR was originally registered against unknown persons, and nothing incriminating was recovered from the petitioner.

4.1 He further submits that nothing incriminating is expected to be recovered from the petitioner, and there is no need for further custodial interrogation. There is no likelihood that the petitioner will tamper with evidence and/or influence prosecution witnesses.

4.2 Learned counsel for the petitioner also relies on bail order of similarly situated co-accused, namely, Wasakha Singh @ Dholu, who has already been granted regular bail by this Court on July 25, 2023 (Annexure P-2) in CRM-M-10199-2023.

5. On the other hand, learned State counsel, assisted by learned counsel for complainant, opposes the bail petition. Learned State counsel submits that petitioner has committed serious offence. If enlarged on bail, petitioner may tamper with the evidence and/ or influence the witnesses. He further submits that five more cases are pending against the petitioner. Out of 5 cases, in 02 cases, he is on bail and in three cases, he is on production warrants. He is a habitual offender.

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

7. On a Court query, learned State counsel, on instructions from ASI Krishna Singh, submits that challan has been filed and charges were framed on 15.02.2023. Being so, since trial has commenced, petitioner is not required for any further custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against petitioner are a matter of trial at this stage. Out of 15 prosecution witnesses, 4 have been examined so far. Conclusion of the trial is likely to take quite sometime as it is proceeding at a snail pace. Whereas petitioner has been languishing in jail for more than a year, being in custody since 02.10.2022.

8. Petitioner is being kept in judicial custody on the unfounded apprehension of tampering with the evidence and/ or influencing the witnesses.

9. Petitioner is stated to be a young boy of 22 years and is on the cross-roads of his career and his future is getting severely jeopardized due to prolonged incarceration. Having got a family and fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

10. Co-accused, namely, Wasakha Singh @ Dholu has already been granted regular bail by 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, 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.

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

(ARUN MONGA)
JUDGE

04.10.2023
Vandana

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