

212

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

CRM-M-40763-2023 (O&amp;M)

Date of decision: 25.08.2023

Suresh Kumar

....Petitioner

Versus

State of Punjab

....Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA****Present:** Mr. Naveen Upadhyay, Advocate  
for the petitioner.

Ms. Guramrit Kaur, AAG, Punjab.

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**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.105 dated 17.08.2022, registered under Sections 302, 323, 427, 212, 201, 148 read with Section 149 of IPC at Police Station, Balongi, Punjab.

2. Prosecution case is one Dev Raj Sharma stated that his younger son, Bunty Sharma, was in the finance business. On 16.08.2022, around 09:30 p.m., his son received a call from Satnam Singh @ Nikku's mobile phone. During the call, Satnam Singh informed him that Ajay Patel, Parvesh Bawa, and 10-12 other unidentified individuals had assaulted him near Rivel Kanal. They urged Bunty to come to the location. In response to the call, Bunty went to the specified place; but never to return. Subsequently, Dev Raj Sharma himself went to Ganda Nala, where he discovered his son lying on the ground and was being beaten up by the accused individuals. Upon raising an alarm, a crowd gathered at the scene. With the assistance of his friends, he managed to transport his injured son to the Civil Hospital, Phase-6, Mohali. Due to the severity of his injuries, Bunty was later referred to PGIMER, Chandigarh. Unfortunately, the doctors at PGIMER declared him dead. Postmortem of the dead body was conducted. FIR was registered and the investigation commenced. Statements of the witnesses were recorded by the police.

During investigation, the name of the petitioner also surfaced. It was alleged that he gave

shelter to the accused after the occurrence. On the basis of the same, petitioner was made an accused and was arrested on 20.11.2022 (though petitioner claims to be in custody since 19.11.2022).

3. Learned counsel for petitioner submits that conceded allegation of the prosecution is that petitioner gave shelter to the principal accused, who allegedly committed the murder. He further submits that no doubt, he knew the principal accused from the past, but when he came to seek shelter, petitioner had no knowledge of co-accused having committed any crime. However, based on the general presumption that he was since aware of the same, that is why he gave shelter. He has thus been implicated as an accused with the allegation that he had knowingly given shelter to the principal accused.

3.1 He further states that similarly situated co-accused i.e. Vikas Vidhlan, who was also alleged with the same role having given shelter to the principal accused in Delhi, has already been accorded concession of bail by a coordinate Bench of this Court vide order dated 11.05.2023 (Annexure P-3) passed in CRM-M-3070-2023. Petitioner's case is on even better footing vis-a-vis co-accused Vikas Vidhlan, who is on bail and yet petitioner is in jail, he contends. On the ground of parity alone, petitioner is entitled to be released on bail during pendency of trial, he argues.

3.2 Learned counsel for the petitioner submits that name of the petitioner was not figured in the FIR and was added later on, merely because he is father of one of the accused Ajay Patel. Petitioner is totally innocent and has thus been falsely implicated in the case. He further submits that nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/ or influencing prosecution witnesses.

4. On the other hand, learned State counsel opposes the bail petition. She submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice.

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

6. On a Court query, under instructions from SI Sarabjit Singh, learned State counsel submits that challan was presented on 09.02.2023 and charges were framed on 16.05.2023. Investigation is thus complete *qua* petitioner, he is not required for custodial interrogation. Allegations against petitioner are a matter of trial at this stage. Out of 23 prosecution witnesses, none has been examined and next date before learned Court below is 30.08.2023. Commencement/conclusion of the trial is likely to take quite sometime.

7. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been languishing in jail more than 09 months, being behind bars since 19.11.2022. He 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.

8. Petitioner is stated to be 52-year old only bread earner of his family comprising of his wife and children, who are living in sheer penury in his absence. He has already lost his livelihood due to prolonged incarceration. He is not a threat to society in any manner and not flight risk in any manner, given that he has a family to look after and has a fixed abode.

9. Co-accused, attributed with similar role, has been granted concession of bail by a coordinate Bench of this Court vide order 11.05.2023.

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 on his furnishing bail bonds and surety bonds to the satisfaction of Ld. 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 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.

13. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition 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

25.08.2023  
vandana

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