

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-44155-2022 (O&M)

Date of decision: 21.08.2023

Nirmal Singh @ Nimma

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Navinder Jit Singh Dandiwal, Advocate for the petitioner.

Ms. Guramrit Kaur, DAG, Punjab.

ARUN MONGA, J. (Oral)

This is second foray of petitioner seeking 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 Indian Penal Code, 1860 (for short 'IPC') (Sections 450, 148, 149, 120-B IPC added later on) and Sections 25, 27 of Arms Act, 1959 at Police Station Bhagapurana, District Moga, as earlier bail petition filed by him was dismissed as withdrawn vide order dated 19.01.2022 by a coordinate Bench of this Court.

2. FIR has been lodged based on the complaint of Gurjit Singh, an eyewitness. 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, sought refuge at the residence of Surjit Singh Mistry. However, one of the motorcycle occupants still pursued him into the house and fired 4 to 5 shots, resulting in his demise. Whereas, Avtar Singh @Taar, sustained injuries in the incident. Petitioner was later arrested as a suspect and has been in custody since 05.12.2018.

3. Learned counsel for the petitioner submits that petitioner has been implicated in the present case on the basis of suspicion. Petitioner has no concern with the alleged occurrence. Learned counsel would read the statement of eye-witness Avtar Singh, Annexure P-3, in support of his arguments that neither is there any role attributed to the petitioner of being a co-conspirator with the principal accused nor even otherwise any knowledge of the incident in question has been attributed to him nor even a remote

suggestion qua the same or any statement has been made of any past enmity between the petitioner and the family of the deceased and/or the other injured. Merely on an unfounded suspicion, formed on the basis of petitioner being owner of the motorcycle, which was used by the principal accused to commit the alleged crime in question, petitioner was taken into custody and has been languishing in jail ever since.

3.1 Learned counsel for petitioner also 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 a Court query, learned State counsel does not controvert that petitioner was arrested on the ground of being owner of the motorcycle in question, which was used in the crime scene. There is thus reasonable ground to implicate him in the case as he had the knowledge of intended use of motorcycle in the crime. On instructions from ASI Sikander Singh, 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. She however admits that no other case is pending against him.

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 submits that challan was presented on 06.03.2019 in the present case. Charges were framed on 10.04.2019. There are 34 prosecution witnesses out of them 10 have been examined. Conclusion of trial is still likely to take long time as it is proceeding at snail pace. Allegations against petitioner are a matter of trial at this stage. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been languishing in jail for the past more than 04 years and 08 months, being behind bars since 05.12.2018.

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. Petitioner is stated to be 29-year old family person, who are all dependent on him and in his absence, they are living in sheer penury. Being a person with family responsibilities and fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.
9. Considering the overall scenarioand without commenting on merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep petitioner in further preventive custody in instant case.
10. 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.
11. In case, petitioner is found to be involved or get involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.
12. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits 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.
13. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

21.08.2023
vandana

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