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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-44189-2023 (O&M)

Date of decision: September 12, 2023

Balwinder Singh alias Kala

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Ms. Hanima Grewal, Advocate for
Ms. Navreet Dhaliwal, Advocate for petitioner.

Mr. Shubham Kaushik, AAG Punjab.

Mr. Dhrupinder Brar, Advocate for respondent No.2.

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.0169 dated 26.09.2022, registered under Sections 459, 380, 511, 323 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') (Sections 459, 325 and 460 of IPC added later on and Section 458 of IPC deleted), at Police Station Talwandi Sabo, District Bathinda, Punjab.

2. 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 him loss of his tooth. Subsequently, all the assailants fled from the scene. An FIR was lodged. The petitioner was later apprehended as a suspect and has been in custody since September 30, 2022.

3. Learned counsel for petitioner would contend that no specific or overt act/injury has been attributed to the petitioner. She further urges that petitioner was not even present at the scene of alleged occurrence. He has nothing to do with the alleged offence. She also submits that there is previous history of enmity between family of petitioner, who is

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cousin nephew of complainant. She further submits that without carrying out any test identification of the accused, merely on self-serving statement of an interested witness, petitioner has been implicated as an accused in the FIR in question. The whole version of the prosecution is fabricated. Allegations against the petitioner are vexatious. The purported role attributed to the petitioner does not constitute any offence, much less offence under Section 459 or 460 IPC. She also contends that there is unexplained and inordinate delay of one day in lodging the FIR in question. Nothing was recovered from the petitioner. Petitioner, who is cousin nephew of the complainant, was not even named in the FIR as same was registered against unknown persons. Petitioner was later on implicated by complainant for collateral motive owing to party factionalism and groupism in the village.

3.1. Learned counsel further contends that co-accused of the petitioner, namely Wasakha Singh @ Dholu has already been granted the concession of bail by this Court vide order dated 25.07.2023 (Annexure P-3) passed in CRM-M-10199-2023. Petitioner's case is on better footing and yet, he continues to languish in the jail.

4. On the other hand, learned State counsel, assisted by learned counsel for complainant, opposes the bail petition. Learned State counsel, on instructions from ASI Paramjit Singh submits that petitioner has committed a serious offence. He though admits that there is no other case pending against the petitioner, but in one case, production warrants have been issued against him. If released on bail, there is likelihood of petitioner fleeing from trial proceedings and/ or tampering with evidence and influencing witnesses.

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 points out that after challan was filed, charges were also framed way back on 17.01.2023. Investigation *qua* petitioner is complete, he is thus not required for 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. There are total 15 witnesses in the case, out of them 07 have been examined so far. Trial is likely to take a long time as it is proceeding at a snail pace. Whereas, petitioner has already been in jail for the past more than 01 year, being in custody since 03.09.2022.

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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 is 25-year old young boy having one unmarried sister and also has added responsibilities of old age parents on him. He is in the cross-road of his career and his continued incarceration will permanently ruin his chances to earn livelihood and he may be rendered jobless forever. Having family and fixed abode, it is unlikely that petitioner poses any flight risk and/or will flee from trial proceedings.
9. Co-accused of petitioner has already been granted the concession of bail by this Court.
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 12, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No