

CRM-M-46201-2023 (O&M)

226

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-46201-2023 (O&M)

Date of decision: September 20, 2023

Harwinder Singh Sandhu

....Petitioner

versus

State of Punjab

....Respondent

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

Mr. Madhur Sharma, 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.0002 dated 02.01.2020, registered under Section 302, 120-B, 148 read with Section 149 of the Indian Penal Code, 1860 (for short 'IPC') (Sections 420, 467, 468, 471 of IPC and Section 12 of the Passport Act, 1967 added later on) and Sections 25, 27 of Arms Act, 1959 (for short 'Arms Act'), at Police Station, Majitha, Amritsar Rural.

2. According to the prosecution's case, on January 1, 2020, at approximately 8:00 p.m., Gurdeep Singh, the deceased and brother-in-law (Jeth) of the complainant, Charanjit Kaur, had gone to Gurudwara Sahib to pay his respects. While Gurdeep Singh was waiting near Kabal Singh's house for his wife, Gurjeet Kaur, who is the sister-in-law of the complainant, three young individuals arrived on a motorcycle from the village of Buddha. Among them, one was a Sikh gentleman, and the other two were clean-shaven. All three individuals were approximately 24-25 years old. Suddenly, they began firing gunshots from their pistols at Gurdeep Singh and then quickly fled on their motorcycle towards the village of Mann Khera. Upon hearing the commotion, the complainant and Gurjeet Kaur raised an alarm, leading to the arrival of Hardeep Singh, the brother-in-law (Dewar) of the complainant. Gurdeep Singh was rushed to the hospital but tragically succumbed to his injuries. It is alleged that Harmanpreet Singh, son of Nirmal Singh, and

CRM-M-46201-2023 (O&M)

Nirmal Singh himself had previously threatened to harm Hardeep Singh during an election. During the investigation, based on the statement of Hardeep Singh, a co-accused named Balraj Singh, also known as Boori, was identified as a suspect, and his name was included in the case under Rapat No. 30, dated February 28, 2020. In his statement on the same date, Hardeep Singh claimed that his brother, Gurdeep Singh, had been murdered as part of a well-planned conspiracy involving Harmanjit Singh, Nirmal Singh, and three unidentified individuals. Hardeep Singh also mentioned that among these unknown individuals, there was one named Balraj Singh, whom he had frequently seen in the company of Harmanjit Singh. The petitioner was later arrested on March 17, 2020, as one of the unidentified assailants.

3. Learned counsel for petitioner argues that petitioner was falsely nominated as suspect only on the basis of supplementary statement of complainant. Petitioner was not named in the FIR and even he was not present at the time of commission of alleged offence. Not only co-accused Nirmal Singh and Harmanpreet Singh have been granted bail by this Court, but even otherwise complainant and other eye witnesses, who are the star witnesses of prosecution, have been examined and they have not supported the case of prosecution. The trial is likely to result in acquittal of the petitioner, contends the learned counsel.

3.1. Learned counsel for the petitioner submits that initially FIR was registered against Harmanpreet Singh @ Harmanpreet Singh and Nirmal Singh.

3.2. He further submits that petitioner is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/ or influencing prosecution witnesses. Further contends that out of 28 prosecution witnesses, 10 have been examined. Trial will take some time to conclude as it is proceeding at a snail pace.

3.3. He further canvasses that co-accused Harmanpreet Singh was granted the concession of regular bail by this Court vide order dated 13.07.2023 (Annexure P-7) passed in CRM-M-32187-2023 and Nirmal Singh was granted concession of regular bail by a coordinate Bench of this Court vide order dated 27.09.2022 (Annexure P-6) passed

CRM-M-46201-2023 (O&M)

in CRM-M- 54146-2021. Also canvasses that similarly placed co-accused, namely Balraj Singh @ Boori has also been granted concession of bail by this Court vide order dated 11.09.2023 passed in CRM-M-4819-2023. Petitioner is thus also entitled to said concession, as his case is on much better footing.

3.4. Learned counsel submits that nothing is to be recovered from the petitioner and he is not required for further custodial interrogation.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has 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 did not controvert that complainant as well as eye-witnesses have not supported the prosecution version and also the factum of grant of bail to co-accused. He also submits that petitioner is a habitual offender and is involved in 07 more cases as undertrial and in another case, he has been convicted under Sections 42 and 52A of the Prisons Act.

4.1. In rebuttal, learned counsel for petitioner submits that petitioner has already undergone the entire sentence.

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, under instructions from ASI Sarabjit Singh, submits that challan has already been presented and charges *qua* petitioner were framed on 15.02.2023. Investigation is thus complete *qua* petitioner, he is 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. Out of total 28 witnesses, 10 have already been examined. Conclusion of trial is still likely to take long time as it is proceeding at a snail pace. Whereas, per custody certificate dated 19.09.2023, petitioner has already remained in custody for more than 03 years and 02 months, having remained behind bars from 17.03.2020 to 20.07.2022 in the first spell and thereafter from 21.11.2022 till today.

