

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-48724-2023 in/and
CRM-M-51341-2023
Date of Decision: 24.11.2023

Mohit

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Vishal Sharma (Vasudeva), Advocate
for the petitioner.

Mr. Vipin Pal Yadav, Addl. A.G., Punjab.

HARSH BUNGER J.

CRM-48724-2023:

Present application is filed for placing on record the reply to status report dated 15.11.2023 along with Annexures P-9 to P-13.

For the reasons mentioned in the application, the reply to status report dated 15.11.2023 along with Annexures P-9 to P-13 are taken on record, subject to all just exceptions.

Application is accordingly disposed of.

CRM-M-51341-2023:

1. Petitioner (Mohit) has filed this second petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case bearing FIR No.83 dated 20.09.2022 (Annexure P-1), under Sections 307, 323, 379-B(2), 506 read with Section 34 of the Indian Penal Code and Section 25 of the Arms Act (Section 379-B(2) of the Indian Penal Code,

deleted later on and Sections 397 & 411 of the Indian Penal Code, added later on), registered at Police Station Talwara, District Hoshiarpur, Punjab.

2. Earlier bail petition (CRM-M-3869-2023) filed under Section 439 of the Code of Criminal Procedure, on behalf of the petitioner, was dismissed as withdrawn vide order dated 24.05.2023 (Annexure P-4) passed by this Court.

3. In pursuance to an advance notice served upon the State of Punjab, status report by way of affidavit dated 15.11.2023 of Mr. Harkishan Singh, P.P.S., Deputy Superintendent of Police, Sub Division Dasuya, District Hoshiarpur, has been filed on behalf of State of Punjab, which is already on record.

4. Custody certificated dated 22.11.2023 of the petitioner is filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.

5. Briefly, the aforesaid FIR was registered on the basis of statement of complainant, namely Munish Kumar, to the effect that he is working as a Salesman at liquor vend of Village Datarpur and on 19.09.2022 at about 8:30/9:00 P.M., when he, along with Rakesh Kumar, was counting the daily collection of about Rs.95,000/- then a white Swift Car (without number plate) came from the Canal side and stopped in front of the liquor vend; and three persons carrying pistol like weapon in their hands alighted from the car. It is stated that one of the said persons pointed the pistol towards complainant and fired a gun shot with an intention to kill him, but the complainant fell from the chair and got saved. Thereafter, all the assailants forcibly entered the liquor vend and pointed pistol towards complainant's head and Rakesh Kumar and snatched Rs.95,000/- from them;

and when they raised objection then blows were given to them with pistol butt. It is further alleged that the assailants also gave *danda* and fist blows to the complainant while he was lying down, resultantly, he suffered injuries on his left arm/chest. It is stated by the complainant that when the assailants were beating Rakesh Kumar, he identified one of the assailants as Gurwinder Singh, who was already known to him, however, the other two assailants had covered their faces with white clothes. It is alleged that the assailants snatched Rs.95,000/-, six bottles of liquor and Paytm Machine from the complainant and Rakesh Kumar, and thereafter, sped away the car. It is stated by the complainant that the assailants were total four in number. The complainant is stated to have informed the liquor vend contractor about the occurrence and thereafter, FIR (Annexure P-1) was registered. The injured were medically treated at the B.B.M.B. Hospital.

6. As per status report, during investigation, complainant Munish Kumar gave supplementary statement on 03.10.2022, wherein he named the unidentified accused as Harman Singh Randhawa, Bagdadi, Mohit Kumr (petitioner); and accordingly, Mohit Kumar (petitioner), Harman Singh Randhawa and Bagdadi were nominated vide DDR No.29 dated 03.10.2022. It is stated that the petitioner was arrested in the instant case on 19.10.2022 and on the basis of his disclosure statement, vehicle bearing registration No.PB-01-C-9860 along with currency notes of Rs.13,200/-, snatched from the complainant, were recovered from his possession. Further, he made another disclosure statement on 28.10.2022 and got recovered 7.62 mm country made pistol along with its magazine and two cartridges and Swift car bearing registration No.PB-07-CB-2439 used in the commission of offence. Thereafter, offence under Section 411 of the Indian Penal Code was

added vide DDR No.35 dated 28.10.2022. Further as per the disclosure statement of petitioner, another vehicle bearing registration No.PB-07-BU-8339 and magazine along with four cartridges of 7.65 mm were got recovered by him. Subsequently, offence under Section 379-B of the Indian Penal Code was deleted and offence under Section 397 of the Indian Penal Code was added in the instant case vide DDR No.12 dated 16.12.2022. It is further stated that after completion of investigation, challan against the petitioner was presented for commission of offences under Sections 307, 397, 323, 506, 34, 411 of the Indian Penal Code and Section 25 of the Arms Act on 17.12.2022 and the charges were framed *qua* the petitioner on 09.08.2023. It is also stated that raids were being conducted to arrest the other co-accused in this case.

7. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the present case. It is submitted that initially the petitioner was not named in the instant FIR and it was only on the basis of supplementary statement suffered by the complainant that petitioner was nominated in this case. It is stated that the injuries sustained by complainant are declared to be simple in nature and no injury is attributed to the petitioner. It is further stated that prosecution story is a concocted one as there is a delay of one day in registration of the FIR in question. Learned counsel for the petitioner contends that now even the private witnesses, including the complainant, have turned hostile.

8. Learned counsel submits that the petitioner had applied for grant of regular bail before the Court of Sessions Judge, Hoshiarpur, which was wrongly declined vide order dated 20.12.2022 (Annexure P-3). It is stated that the petitioner is in custody in this case since 19.10.2022;

investigation of case is complete, challan stands submitted and even charges have been framed; and out of the total seventeen prosecution witnesses, only five have been examined by now, hence, conclusion of trial will take some time and no useful purpose would be served with further incarceration of the petitioner. Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail is made.

9. Per contra, learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. It is submitted that after the petitioner was nominated in the instant case on the basis of supplementary statement suffered by the complainant, numerous recoveries have been effected in the instant case on the basis of various disclosure statements suffered by the petitioner. It is submitted that other co-accused are yet to be arrested. Learned State counsel submits that in case the petitioner is released on bail then he might influence the witnesses and also abscond and delay the trial. Accordingly, prayer for dismissal of the present petition has been made.

10. I have heard learned counsel for the parties and perused the paper book as well as status report with their able assistance.

11. In the instant case, the petitioner along with co-accused, being armed with pistols, committed robbery from the complainant and one Rakesh Kumar by snatching an amount of Rs.95,000/- from them, which was allegedly the daily collection of liquor vend of Village Datarpur; and when the complainant resisted the robbery then injuries were caused to him and gun shots were also fired, allegedly with an intention to kill him.

Further, several recoveries, including the recovery of currency notes of

Rs.13,200/-, allegedly snatched from the complainant, as well as 7.62 mm country made pistol along with its magazine and two cartridges and the Swift car used in the commission of the alleged offence, have been effected on the basis of various disclosure statements suffered by the petitioner. The charges against the petitioner are serious and grave in nature. A perusal of file reveals that the other co-accused Gurwinder Singh @ Gora is stated to have fled from the country, allegedly with the help of his father Bachittar Singh, and thus he has also been nominated as accused in this case.

12. In the present case, it is observed that admittedly the trial has been proceeding and out of 17 witnesses, five witnesses have been examined. It is further, noticed that two of the witnesses have already turned hostile. The petitioner attempts to derive mileage from this circumstance.

13. In "***State of U.P. Through CBI v. Amarmani Tripathi***", (2005) 8 SCC 21, the Hon'ble Supreme Court in paragraph No. 18 observed as follows:-

*"18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail[see ***Prahlad Singh Bhati v. NCT, Delhi*** [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] and ***Gurcharan Singh v. State (Delhi Admn.)*** [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 Supreme Court 179]]. While a vague allegation that the accused may tamper with the evidence or witnesses*

*may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in **Kalyan Chandra Sarkar v. Rajesh Ranjan [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977]** : (SCC pp. 535-36, para 11)*

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

*(c) Prima facie satisfaction of the court in support of the charge. (See **Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688]** and **Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124]** .)"*

14. In the present case, it is observed that the petitioner is alleged to be the member of a gang who committed the offence and other co-accused are yet to be arrested; and one of the co-accused is stated to have left the country.

15. Furthermore, when the accused is facing serious charges, he

may develop temptation to jump the bail. The apprehension expressed by the State counsel that if released on bail, there is every likelihood of the petitioner trying to tamper with the prosecution evidence by giving threats and inducement to the prosecution witnesses and also absconding even to prolong the trial, cannot be brushed aside lightly.

16. Therefore, keeping in view the nature and gravity of the offence/charges; severity of the punishment in the event of conviction; danger of the accused absconding or fleeing, if released on bail; likelihood of the offence being repeated and the reasonable apprehension that the presence of the accused would have the consequence to intimidate the witnesses, who are yet to be examined in the trial; in my considered view, it would not be in the collective interest of the community to enlarge him on bail at this stage.

17. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

18. All pending application(s), if any, shall also stand closed.

24.11.2023
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No