

2024:PHHC:104425



210

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-12705-2024 (O&M)
Date of decision: 13.08.2024

Sukhwinder Singh @ Sukhi

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. G.P.S. Pathania, Advocate and
Mr. R.S. Manhas, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This third petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking regular bail in case bearing FIR No.62 dated 30.06.2023 under Sections 307, 326, 341, 324, 323, 148, 149 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Division No.1, District Pathankot; earlier two petitions i.e. CRM-M-45441-2023 and CRM-M-61728-2023 were dismissed as withdrawn on 17.10.2023 and 21.02.2024, respectively.

2. Learned counsel for the petitioner submits that this third petition

2024:PHHC:104425



has been filed for grant of regular bail on the ground that now the petitioner has completed 01 year of custody.

3. The present FIR was registered on the basis of statement of complainant-Rohit Salrotra, on the allegations that he was doing private job in Pepsi Factory. On 24.06.2023 at about 04:00 or 05.:00 p.m., he and his brother Sahil were coming towards Civil Hospital Pathankot in a private Auto to bring the medicine of their mother. When they reached in front of the main gate of Civil Hospital Pathankot and his brother Sahil was just to come out from the Auto, they saw that co-accused Love along with petitioner Sukhi and Rahul, armed with weapons, were standing outside the gate. Co-accused Love gave a lalkara to catch hold him and teach a lesson for fight. On hearing the alarm, his brother Sahil told him that they should run from there, as the petitioner along with co-accused wanted to kill them. They told the Auto driver to run the Auto and on their request, the Auto driver ran the Auto. The petitioner along with co-accused followed them and tried to kill them, but they managed to save themselves. When they reached near Bedi Petrol Pump, then on the opposite side again, co-accused Love and Rahul and petitioner Sukhi were standing armed with sharp-edged weapons and they stopped their way. Co-accused Love took him out of the Auto and gave a datar blow upon him, which struck on the middle of his head. Co-accused Rahul also gave blow of handle of datar upon him, which struck on his face. Petitioner Sukhi also gave blow of handle of spade upon him, which struck

2024:PHHC:104425



on the wrist of his left hand. Co-accused Love again gave blow of datar upon him, which struck on his left foot and thereafter, he fell on the road. Co-accused Rahul again gave the blow of datar, which struck on his nose. When his brother Sahil came forward to rescue him, petitioner Sukhi and co-accused gave reverse blows of datar, which struck on the neck of his brother Sahil, due to which, he also fell on the road. Along with aforesaid accused persons, there were 4/5 unidentified persons. When they raised alarm, then all the aforesaid assailants ran away from the spot along with their respective weapons on their motorcycles. The attack was made by the aforesaid assailants with intention to kill them. On the basis of aforesaid statement of the complainant, FIR (*supra*) was registered.

4. Learned counsel for the petitioner, *inter alia*, contends that FIR (*supra*) was registered after a delay of 06 days. It is case of version and cross-version. In the cross-version, the complainant party has also been challenged by the investigating agency. The petitioner is only attributed spade blow on the wrist of the left hand of the complainant, as such, no offence under Section 307 of IPC is made out against him. Moreover, there is not specific opinion of the Medical Officer declaring the injuries as dangerous to life and invocation of Section 307 of IPC would be a debatable point to be decided by learned trial Court. The main accused namely Love @ Love Kumar has already been granted the concession of regular bail by this Court vide order dated 11.01.2024 passed in CRM-M-105-2024 (Annexure

2024:PHHC:104425



P-4). The petitioner is behind bars since 30.06.2023.

5. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that there are specific allegations against the petitioner. Learned State counsel produces the custody certificate dated 12.08.2024 of the petitioner in the Court today, which is taken on record.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is behind bars since 30.06.2023 and the trial of the case will take long time in its conclusion, as out of total 15 prosecution witnesses, none has been examined so far. The culpability, if any, would be determined at the time of trial. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

7. A two Judge Bench of the Hon'ble Supreme Court in ***Satender Kumar Antil Vs. CBI, (2022) 10 SCC 51***, with respect to prevailing conditions of undertrial prisoner in India has observed as under: -

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They

2024:PHHC:104425



are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

8. In view the above, present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, petitioner Sukhwinder Singh @ Sukhi is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court concerned.

9. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

[HARPREET SINGH BRAR]
JUDGE

13.08.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No