

221

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45071-2022 (O&M)

Date of Decision: 09.04.2024

NIRBHAI SINGH

.. Petitioner

Vs.

STATE OF PUNJAB

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. A.P.S. Deol, Sr. Advocate with
Mr. H.S. Deol, Advocate for the petitioner.

Mr. Anup Singh, AAG, Punjab.

Dr. Rau P.S. Girwar, Advocate and
Ms. Archana Arora, Advocate
for the complainant.

...

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.24 dated 25.01.2021, registered for the offences punishable under Sections 302, 201, 354-A, 354-D and 34 of IPC, 1860 and Sections 25/27/54/59 of Arms Act, 1959 at Police Station Kharar, District SAS Nagar.
2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:-

“First Information content: Copy of statement. Statement of Kuldeep Singh son of Mähinder Singh r/o village Chunni Khard, P.S. Badali Ala Singh Distt. Fatehgarh Sahib aged about 43 years, Mob. No. 98721-57975. Stated that I residing on the above address and working as Security Guard at Phase-5 Mohali. Today, I was present at my house due to night duty. On receiving information from you, I along with my uncle Gobind Singh son of Narata Singh came at the spot after crossing the bridge on the road of SYL Canal village Batta (towards Village Gharuan side). Where I saw the auto bearing No. PB 65 AD 9955 colour green/yellow of my brother Jodha Singh Marka GMP Bajaj which was parked on one side of the

road near the bushes and the blood was found near the aforesaid auto. Thereafter, I along with my uncle reached at Saraswati Hospital, Ghaduan, where I saw my brother Jodha Singh who had died. I learnt that my brother- Jodha Singh had died due to fire shot and sharp edged weapon. My frother used to ply auto. Who usually went with his auto from his House at about 10.30 in the morning. There was quarrel between my brother Jodha Singh and Harpreet Singh's father Balwinder Singh r/o village Chunni Khurd about 3/4 months ago, in which the matter has been compromised. But Harpreet Singh @ Happy had a grudge in his mind, due to which Harpreet Singh @ Happy used to give life threats to my brother-Jodha Singh. My brother told us about this. We have full suspicion that Harpreet Singh @ Happy along with his unknown companions had murdered my brother. Legal action be taken against him. I have recorded my statement to you, read over it and it is correct.”

3. Learned senior counsel for the petitioner has argued that the petitioner is in custody since 01.02.2021. Learned senior counsel for the petitioner has further argued that there are two versions in the prosecution story and both are inconsistent with each other. Learned senior counsel for the petitioner has further argued that all private witnesses already stand examined. Learned senior counsel for the petitioner has further argued that the case in hand does not pertain to any eye-witness account and at the most there is 'last seen' evidence against the petitioner which is not sufficient for recording of judgment of conviction against the present petitioner. Thus, regular bail is prayed for.

4. Learned State counsel as also learned counsel for the complainant have opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail.

5. I have heard counsel for the parties and have gone through the available records of the case.

6. The petitioner was arrested on 01.02.2021 whereinafter investigation was carried out & challan was presented on 01.05.2021. Total 48 prosecution witnesses have been cited out of which 11 stand examined. It is pertinent to note herein that all private material witnesses stand examined. The rival contention of the learned counsel for the parties regarding the weightage required to be attached to two versions of the prosecution story as put forward by learned senior counsel; the issue of motive involved and other analogous issues raised shall be gone into during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the remaining prosecution evidence. As per the custody certificate dated 08.04.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 03 years and 02 months & is not shown to be involved in any other case. Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

7. In view of totality of factual matrix of the present case, the instant petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.

- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaqa Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.

9. Ordered accordingly.

10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

09.04.2024

Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No