

CRM-M-55413-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-55413-2023
Reserved on: 07.08.2024
Pronounced on: 30.08.2024

Harpreet Singh @ Happy ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Harpreet S. Multani, Advocate and
Mr. Harmanpreet S. Mandir, Advocate
for the petitioner.

Mr. Durgesh Garg, Asst. AG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
123	04.08.2018	Islamanad, District Police Commissionerate Amritsar	307, 323, 324, 325, 302, 148, 149 IPC and Sections 25/27 of Arms Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973, seeking regular bail.
2. In paragraph 15 of the bail petition, the accused declares that he has no criminal antecedents. However, as per paragraph 12 of the reply filed to the bail application and the reply/custody certificate, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	127	30.07.2021	15/18 of NDPS Act, 52-A of Prison Act	Special Task Force, SAS Nagar
2	233	26.09.2022	28/29/30 of NDPS Act and 52-A of Prisons Act	Special Task Force, SAS Nagar
3	368	29.09.2022	52-A of Prison Act	Goindwal Sahib, District Tarn Taran
4	244	06.10.2022	21-C of NDPS Act and 25 of Arms Act	Special Task Force, SAS Nagar

3. Thus, the petitioner intentionally concealed his massive criminal antecedents from this Court.

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4. Considering the bail petition of an accused with a criminal history throws an onerous responsibility upon the courts to act judiciously and reasonably because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecution resulting in acquittal or discharge, or when Courts quashed the FIR, the prosecution stands withdrawn, or the prosecution filed a closure report, cannot be included. Although crime is to be despised and not criminal, for a recidivist, the contours of a playing field are marshy, and the graver the criminal history, the slushier the puddles.

5. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“...facts of the present case/FIR No. 123 dated 04/08/2018, registered under Section 307, 323, 324, 148, 149 IPC, 25/54/59 Arms Act, (added Sections 302,325 IPC) at Police Station Islamabad, Amritsar-City are that the present case was registered on the basis of statement of the complainant Dharminder Singh alias Hello by Inspector Harjinder Kumar the then SHO of Police Station Kot Khalsa, Amritsar-City wherein it is alleged that on 04/08/2018 at about 2:30 PM, he along with his friend Ranjit Kumar alias Golu and Gaurav Sharma R/o Guru Nanak Pura, Kot Khalsa were roaming in the fair of Guga Peer at their village then suddenly Sagar armed with sickle (dadar), Vicky Dhaga armed with sickle (dadar), Arjun armed with sword, Kaka @ Pepsi armed with sword, Money armed with baseball, Atul Photographer armed with baseball bat, Tony armed with sickle (dadar) and 6/7 unknown persons, one of them was armed with DBBL gun and another was armed with pistol, came there and they all surrounded them. Then on asking of Vicky Dhaga, all the above accused attacked them with their weapons, hence they resisted them and had scuffling with them. Then Vicky Dhaga asked one of the Sikh persons to shoot at them, hence, that Sikh person fired gunshot from his DBBL 12 bore gun at them with an intention to kill them, which hit on chest of Gaurav Sharma and on face of Ranjit Kumar @ Golu and right eye and one pellet hit on his head. One of the assailants namely Sagar attacked at his head (Dharminder Singh @ Helo) with his sickle (dadar), hence he fell down on the ground. All the accused ran away from the spot with their respective weapons. He was badly injured and taken to Civil Hospital, Amritsar and admitted there for treatment and Ranjit Kumar @ Golu and Gaurav Sharma were admitted to other hospitals by their family members. Therefore, the present FIR was registered.”

6. The petitioner's counsel has made the following arguments:

“10. That all the co-accused of the petitioner were named in the FIR with specific roles namely Om Parkash @ Vicky Pal, Arjun Singh, Jujhar Singh alias Vicky Dhagga, Sagar Singh, Manpreet Singh @ Manni, Atul Kumar @ Auto Photographer, Kishan Singh @ Kaka Pepsi and Sitara Singh @ Tony approached this Hon'ble Court for grant of regular bail and this Hon'ble Court vide orders dated 30.01.2020, 04.08.2020, 23.02.2021,

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20.05.2021, 07.07.2021, 4.08.2021, 14.02.2022 and 09.08.2022 have been pleased to grant regular bail to the co-accused. The true copies of orders dated 30.01.2020, 04.08.2020, 23.02.2021, 20.05.2021, 07.07.2021, 4.08.2021, 14.02.2022 and 09.08.2022, are annexed herewith as ANNEXURE P-3 to P-10 respectively.

11. That the petitioner is not named in the FIR. Even as per the statement of PW1 Dharminder Singh he has specifically mentioned in his statement that the sikh gentlemen face was muffled who has fired with the double barrel gun.

It is pertinent to mention here that no test identification parade was carried out. It is very much clear from the cross-examination of PW1 Dharminder Singh the injured eye witness. He has specifically stated in his cross examination that police has shown him Harpreet Singh @ Happy in the police station after two three weeks of occurrence. He further stated in his cross examination that the police has shown the person and then he identified him Harpreet Singh @ Happy who gave gunshot injuries to him and others. The case of the petitioner is at the better footing then the co-accused as the petitioner is not named in the FIR. The petitioner is only named in the disclosure statement of the co-accused, who has already been granted regular bail by this Hon'ble Court. Therefore, the petitioner claims parity with the co-accused. Copy of Statement and cross examination of PW 1 Dharminder Singh alias Hello dated 3.12.2021 is annexed herewith as ANNEXURE P-11.

12. That in the present case charges have been framed on 24.02.2020, but till date only 11 witnesses have been examined out of total 49 PWs. The conclusion of trial will take considerable period of time as the prosecution has cited as many as 49 witnesses and they are not appearing before the Trial Court. Copy of the orders dated 21.09.2023 and 06.10.2023 are annexed herewith as ANNEXURE P-12 and P-13 respectively."

7. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

8. The State's counsel opposes bail and refers to the reply.

9. It would be appropriate to refer to the following portions of the reply, which read as follows:

"7. That it is submitted that the accused Sagar Singh was arrested in this case on 18/09/2018 and the accused Arjun Singh was arrested in this case on 25.10.2018 by Inspector Harjinder Kumar the then SHO PS Kot Khalsa. One sickle (dadar) from Sagar and one sword from Arjun Singh, used in the crime of the present case, have been recovered. On the basis of disclosure statement of the above accused Arjun Singh, the accused who had shot fire from DBBL gun .12 bore resulting in the death of deceased Ranjit Kumar @ Gollu and injuries to the complainant Dharminder Singh @ Helli and injured Gaurav Sharma, was identified as Present Petitioner Harpreet Singh alias Happy R/o Devidas Pura, Amritsar. Hence, the

present petitioner was also nominated as accused in the present case FIR No. 123/2018 (supra). An offence under Section 325 IPC was also added and Section 324 IPC was deleted in this case vide GDR No. 24 dated 06.12.2018. These facts were further corroborated during his custodial interrogation by the co-accused Jujhar Singh.

x x x x x
9. That it is submitted that thereafter during the course of investigation of the aforesaid case FIR No. 123/2018 (supra), the present petitioner Harpreet Singh @ Happy was arrested on 25.05.2019 and based upon his disclosure statement, the weapon of offence i.e. on DBBL gun.12bore used in commission of crime, was recovered on 26.05.2019 from his residential address. The identification of the present petitioner Harpreet Singh@ Happy was made by the complainant Dharminder Singh @ Bhollua and injured Gaurav Sharma as the accused person who had fired gunshots from his DBBL gun at them and deceased Ranjit Kumar @ Gollu.
x x x x x

ROLE OF PETITIONER AND GROUNDS FOR DISMISSAL OF PETITION

13. That it is respectfully submitted that keeping in view the totality of the facts and submissions made hereinabove, it is evident that the present petitioner Harpreet Singh Happy is the main accused as the present petitioner armed with DBBL. gun.12 bore which he was having with him without having any license or valid document and he had fired gunshots from this DBBL gun.12bore, which resulted into death of the deceased Ranjit Kumar @ Gollu and causing injuries to the complainant Dharminder Singh @ Hello and Gaurav Sharma. The prosecution witness Dharminder Singh @ Hello has been examined by the learned trial Court and he has supported the prosecution version and he duly identified the present petitioner being the accused who had fired gunshots at them. The petitioner Harpreet Singh @ Happy is not entitled to seek the relief of bail on the basis of the bails granted to other co-accused as the allegations levelled in this case against the petitioner are more serious than those levelled against other co-accused persons. The present case is pending for trial and prosecution witnesses are being examined by the learned trial Court. During judicial custody of the petitioner Harpreet Singh, the aforementioned four FIRs have been registered against him as he is involved in criminal activities even in judicial custody, which goes to show that the petitioner is a habitual offender. There is strong apprehension that the petitioner can ARH ANDIGAR tamper with evidence by intimidating or influencing the prosecution witnesses, if he is released on bail, which would prejudice the trial of the case. As such, the petitioner is not entitled to the relief of bail. Therefore, the present petition is liable to be dismissed.”

10. The petitioner is the main accused and had allegedly fired the fatal shot. His case is entirely different from that of the co-accused, who got bail and is not entitled to bail on parity. The sentence prescribed is imprisonment for life or death, and as such, the petitioner’s custody of five years cannot be said to be long enough to entitle him to bail on the grounds of prolonged custody.

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11. A perusal of the bail petition and the documents attached prima facie points towards the petitioner’s involvement and does not make out a case for bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.
12. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.
13. **Petition dismissed.** All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

30.08.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.