

CRM-M-40025-2023 (O&amp;M)

222 (1<sup>st</sup> case)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-40025-2023 (O&amp;M)

Date of decision: August 31, 2023

IshuSaraswal

....Petitioner

versus

State of Punjab

....Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA****Present:-** Mr. Naveen Bawa, Advocate for petitioner.

Mr. Mohit Thakur, AAG Punjab.

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**ARUN MONGA, J. (ORAL)**

After being declined bail by the trial Court, petitioner before this Court seeks his release as undertrial in a case bearing FIR No.0055 dated 17.03.2023, registered under Sections 307, 323, 324 of the Indian Penal Code, 1860 (for short 'IPC') (Sections 120-B, 473 of IPC added later on), at Police Station, Salem Tabri, District Ludhiana.

2. Per prosecution version, on 16.03.2023, at about 8:30 p.m., a young boy named Mukesh came to the house of complainant-Rimpi and informed her that someone has attacked her husband-Arun Bhatti with sharp edged weapon. She immediately reached the scene of occurrence where her husband was lying injured. A sharp edged weapon had been used to inflict injuries on his head and left leg and other parts of his body. She took her husband to the Civil Hospital with the help of police. She stated that her husband was attacked by one Gaurav Chitkara @ Janu and his accomplices. An FIR was registered on her statement. During investigation, petitioner was arrested as a suspect accomplice of the prime accused- Gaurav @ Janu and is in custody since 26.03.2023.

3. Learned counsel for the petitioner submits that neither petitioner was named in the FIR nor has any role/injury attributed to him. Petitioner has not been attributed any specific or overt or covert act. He further submits that petitioner was arrayed as an accused on the basis of alleged disclosure statement of one Vicky Sahota, allegedly another accomplice of prime accused-Gaurav.

3.1. Learned counsel for the petitioner pleads that petitioner has a genuine *alibiqua* incident in question since at the same time he was performing final rituals of

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immersing ashes of his paternal uncle along with his cousin brother (son of uncle) as well as father and other family members. Petitioner has been arrested as a suspect on the basis of disclosure statement of co-accused Vicky Sahota which is not *per se* admissible in evidence. Other than that there is no evidence against him. Further points out that even the complainant has not made any allegation against the petitioner that he is in any manner a co-conspirator. Whereas, self-concocted version of prosecution is that petitioner had sent principal accused to inflict injuries on husband of the complainant. Further states that none of the persons, who have actually inflicted injuries have been arrested, while the petitioner continues to be in custody on an unfounded suspicion, formed on the basis of disclosure statement of co-accused, as aforesaid. Petitioner has thus been falsely implicated in this case.

3.1. Learned counsel for the petitioner also contends that co-accused of the petitioner, namely, Ashok Kumar has already been granted concession of interim anticipatory bail by this Court vide order dated 19.07.2023 (Annexure P-7) passed in CRM-M-18375-2023.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. He further submits that petitioner and co-accused, namely Brij Pal are main conspirators of the entire crime and committed murderous attack which was so dreadful and serious that injured is still unfit to make any statement. If enlarged on bail in present case, there is every likelihood that petitioner may tamper with the evidence and/ or influence the witnesses. He though admits that there is no other case against the petitioner.

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 Hardeep Singh, informs that challan was filed on 21.06.2023. Petitioner is thus not required for any further custodial interrogation.

7. Allegations against petitioner are a matter of trial at this stage. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Conclusion of trial is still likely to take long time as it is proceeding at a snail pace. Whereas,

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petitioner has already been languishing in jail for the past more than 5 months, being behind bars since 26.03.2023.

8. Petitioner is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/or influence witnesses.

9. It is stated that petitioner is a 25-year old young person, who has already lost his livelihood due to his continued incarceration. His further incarceration may render him jobless forever. Being family man and having clean antecedents and fixed abode, it is unlikely that they pose any flight risk and/or will flee from trial proceedings.

10. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.

11. Accordingly, petitioner is ordered to be released on bail, in case not required in any other case, on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where his case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

12. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for limited purpose of bail hearing alone and learned trial Court shall proceed without being influenced with this order.

13. Pending application(s), if any, shall also stand disposed of.

**(ARUN MONGA)  
JUDGE**

**August 31, 2023**

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No