

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-34518 of 2015

Date of Decision: May 10, 2016

Kulwant Singh

.....Petitioner

Vs.

CBI, Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. J.S. Bedi, Sr. Advocate with
Mr. Harpreet Multani, Advocate
for the petitioner.

Mr. Sumeet Goel, Advocate for CBI.

Mr. C.S. Bakshi, Advocate for the complainant.

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M.M.S. BEDI, J.

This is a seventh regular bail petition in a case registered at the instance of Harjinder Singh alleging that on 18.12.2010, the complainant along with deceased and other family members had gone towards the house of the petitioner when they saw that the petitioner and his son were quarreling with his cousin Gurpreet Singh . The petitioner was armed with .12 bore rifle. He along with 4 other persons, who were allegedly carrying pistols and 7/8 unknown persons had attacked deceased Rattan Singh. The

petitioner fired at the complainant and his family members, as a result of which Rattan Singh died. The allegation against the petitioner is that he raised a lalkara and fired from his .12 bore rifle, hitting on the head of the deceased.

Counsel for the petitioner has vehemently contended that it is a case of cross version and that the cross version has already been registered against the complainant party. It has been submitted that an application u/s 311 Cr.P.C. has been filed on behalf of the petitioner for summoning two witnesses for effective cross-examination.

Counsel for the CBI has contended that all the pleas taken up in the present petition, were available to the petitioner when he filed the previous petitions and that all the pleas stand already considered while disposing of the earlier petitions for bail.

Counsel for the petitioner Mr. J.S. Bedi, Sr. Advocate has submitted that as a matter of fact the present petition is not the 7th petition but it is only the 3rd petition on the basis of changed circumstances. He has referred to the circumstances from the beginning contending that when the challan was presented on 20.2.2011 and charges had been framed against the petitioner and Dilbar Singh on 14.1.2012, supplementary challan was prepared by the Special Investigating Team on the basis of further investigation *u/s* 173(8) Cr.P.C., wherein the petitioner was found innocent on 24.7.2012 but the complainant had sought CBI investigation by filing CRM M 912 of 2011 (Annexure P-3). A co-ordinate Bench of this Court

vide order dated 15.10.2012 transferred the investigation to the CBI. The petitioner, thereafter, moved first petition for bail, which was dismissed on 15.10.2012 (Annexure P-8). Pursuant to the directions of the High Court, CBI registered a case against the petitioner on 13.12.2012. The petitioner thereafter filed a second petition for bail inter alia on the ground that the investigation is being delayed. The said petition was dismissed on 31.7.2013. The petitioner had approached the Apex Court but on 16.9.2013 (Annexure P-12) his petition for Special Leave to Appeal was dismissed with an observation that if the position of the case continued to remain the same till the end of December, 2013, the petitioner would be free to move the trial court. Counsel for the petitioner submits that the CBI filed challan u/s 173(2) Cr.P.C. against the petitioner and others and even the cross version of the petitioner has been found to be false.

Counsel for the petitioner brought to the notice of the Court that the 3rd petition was filed only for an interim relief (Annexure P-10), which was dismissed on 1.5.2014. Counsel informed that that anticipatory bail petitions of the co-accused of the petitioner were allowed vide orders Annexures P-5 and P-6 on 9.5.2014. On the basis of the investigation conducted by CBI, the petitioner along with Dilbar Singh, Jitender Singh and Amarjit Singh were charged on 21.10.2014. The petitioner, thereafter, filed another petition for interim bail for attending the marriage of his nephew but it was dismissed on 19.11.2014. Another petition (Annexure P-

11) was merely filed for attending the marriage of his daughter and it was allowed only for six hours on 18.2.2015.

In the light of the above said sequence, counsel for the petitioner submits that 3 petitions, mentioned herein above, were for interim bail and would not cause prejudice to the petitioner to file the present petition for bail. Counsel for the petitioner has drawn attention of this Court to the order passed by a co-ordinate Bench of this Court on 26.2.2015 (Annexure P-7) wherein a direction had been issued to the CBI Court to consider the cross case registered at the instance of the petitioner side for the purpose of framing charges in terms of the judgment of the Apex Court in **Vinay Tyagi vs. Irshad Ali alias Deepak and others** (2013) 5 SCC 762. Another petition was filed by the petitioner i.e. CRM M 22599 of 2015 on the basis of the observations of the Apex court. The said application was disposed of by a co-ordinate Bench on 11.8.2015 with a direction to the petitioner to approach the trial Court as per the observations of the Apex Court.

Counsel for the petitioner has further submitted that in view of the above said circumstances, the main case registered against the petitioner along with cross version is pending before the same court and as per the orders of this court dated 26.2.2015 (Annexure P-7), the CBI Court ordered clubbing of the said case and the cross version vide order dated 3.10.2015 (Annexure P-14). Counsel submits that after the cross case having been clubbed with the main case, another occasion arose for the petitioner to file a

fresh petition for bail, as such the present petition has been filed for grant of bail as inordinate delay is being caused by the trial court for adjudication of the main case as well as the cross case, which stand clubbed together. Delay in the investigation and delay in the adjudication of the matter, as per counsel for the petitioner, has caused prejudice to the constitutional right of the petitioner for expeditious disposal of the case against him. It has been submitted that the petitioner has been in custody for the last about 5 years and 4 months.

Counsel for the petitioner submits that delay in adjudication of the case, in view of the circumstances mentioned herein above, cannot be attributed to the petitioner, in any manner, as such, he is entitled to the concession of regular bail on the basis of the fresh circumstances, as mentioned herein above. It has also been submitted by counsel for the petitioner that even if it is presumed for the sake of arguments (though not admitted) that the petitioner would be convicted, the period of detention suffered by him, would entitle him to be released on bail in appeal, subject to the adjudication of his statutory right of appeal.

Counsel for the CBI has opposed the petition for bail inter alia on the ground that in view of earlier petitions having been dismissed, there is no new circumstance to be considered by this court for grant of bail to the petitioner. It has been informed that statements of material witnesses have already been recorded, which is sufficient enough to prima facie indicate the culpability of the petitioner.

After hearing counsel for the parties, it transpires that an application for summoning two witnesses i.e. Clerk from the Office of SSP along with an application and Notary Public of District Court Complex, filed by the petitioner is pending. Without entering into the controversy regarding the status of the trial so far as examination of the above said witnesses is concerned, counsel for the petitioner has vehemently urged that the petitioner is entitled to the concession of bail on the basis of the period of detention already suffered by him as an under trial and on account of the delay having not been attributable to him.

Counsel for the petitioner on the basis of the cross version has submitted that on account of the injuries having been received by the persons from the petitioner side, which do not stand explained by the investigating agency, the petitioner has a strong plea in defence u/s 100 IPC. It has been claimed that the nature of the injury suffered by Dilbar Singh i.e. a gun shot injury on his thigh, the defence plea of the petitioner is prima facie established. The injury on the person of Dilbar Singh is grievous and dangerous to life has not been explained by the prosecution while launching the prosecution against the petitioner.

I have heard learned senior counsel for the petitioner Mr. J.S. Bedi at length and carefully gone through the report under Section 173 (2) Cr.P.C. and the statements of the witnesses recorded in the Court and the cross-version produced in the case. Counsel for the petitioner has not pressed the application for bail on merits but has mainly raised a grievance

that incarceration for 5 years 4 months is itself a strong circumstance to grant the concession of bail to the petitioner for the reasons mentioned hereinabove. The delay in the present case does not appear to be attributable to anyone i.e. neither to the complainant nor to the accused party but is an inseparable part of the democratic adjudication of the procedure of trial which ensures fairness not only to the accused but also to the complainant. The delay is certainly a matter of concern in the present case but neither accused nor the petitioner could be said to be responsible for the delay in the present case. It will be premature at this stage to enter into the niceties of the trial to arrive at a conclusion that whether the present case is a case of self-defence or a case where any party could be said to have acceded the self-defence. In the interest of justice, the only relief which could be granted to the petitioner is that the trial Court should be given a direction to ensure that the trial is concluded expeditiously giving a fair opportunity to the prosecution as well as the defence side to produce evidence. It will be highly appreciated in case the trial of the present case is concluded within a period of three to five months after the receipt of a certified copy of the order.

Dismissed at this stage without prejudice to the rights of the petitioner to approach this Court again in case there is an inordinate delay in conclusion of the trial.

May 10, 2016
sanjay

(M.M.S.BEDI)
JUDGE