

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-44363-2015 (O&M)
DECIDED ON: September 30, 2016

TARVINDER SINGH @ TALLY

....PETITIONER..

VERSUS

STATE OF PUNJAB

....RESPONDENT..

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. P.S. Hundal, Senior Advocate with
Mr. Dinesh Trehan, Advocate,
for the petitioner.

Mr. RPS Sidhu, AAG, Punjab.

Mr. M.S. Sachdev, Advocate,
for the complainant.

JASPAL SINGH, J.

By virtue of instant petition preferred under Section 439 of the Code of Criminal Procedure, petitioner-Tarvinder Singh @ Tally (now confined in Central Jail, Jalandhar at Kapurthala) has sought bail, during the pendency of trial in case bearing FIR No.38, dated 01.04.2013, under Sections 302, 307, 392, 353, 186/34 IPC and Section 25 of the Arms Act, Police Station Sadar Phagwara, District Kapurthala.

2. Instant case stands registered on the basis of statement of HC Balkar Singh, who has unfolded that about 00:45 o'clock during intervening night of 31st March/ 1st April 2013, a police party, of which, he was one of the members headed by ASI Gurdev Singh, held a nakabandi in front of Haveli

Heritage Restaurant. At that time, a person having a small bag hanging on his shoulder came there, who on seeing the police party became nervous and abruptly, tried to run away towards the bridge of Chaheru. He as well as ASI Gurdev Singh chased him. Other members of the police party also reached there. Meanwhile, from the side of Haveli, a white coloured car make Verna bearing registration No. PB-08-6162 came there, in which, three young boys were travelling having revolvers in their hands. They started firing indiscriminately. Shots fired by one of them resulted into infliction of injury near the heart and on the right side of the chest of ASI Gurdev Singh. On sustaining injuries, he fell down and the assailants escaped from there. One of those young boys removed the purse from the pocket of ASI. He also opened fire towards the police party with an intention to kill them. Subsequent thereto, all the four young boys fled away from the scene of occurrence in their Verna car. Injured-ASI Gurdev Singh was rushed to Civil Hospital Phagwara for treatment but unfortunately, he could not survive and succumbed to the injuries.

3. The contention of learned counsel for the petitioner is that the petitioner has been falsely implicated in the instant case. Otherwise, he has nothing to do either with the occurrence or the alleged commission of murder of ASI Gurdev Singh. Even, co-accused of the petitioner namely Palwinder Singh @ Pinda, who is alleged to have indiscriminately fired was not known to him. The petitioner has been roped in, in the instant case, just on the basis of disclosure statement alleged to have been made by his co-accused Rajinder Singh @ Mintu.

4. Learned counsel for the petitioner further contends that after the arrest of the petitioner in the instant case, the police has planted a country made

pistol of 9 MM bore and 4 live cartridges but it is fully proved on record that aforesaid weapon was not used during the course of occurrence. Moreover, there is no direct evidence against the petitioner, who has been nominated as one of the accused in this case just on the basis of statement of a co-accused. He was arrested in this case on 03.04.2013. Since then, he is suffering incarceration without any fault on his part. Though, after the completion of investigation, challan was presented in the Court on 28.06.2016 but even after the expiry of a period of more than 3 years and 3 months, the prosecution is not able to conclude its evidence. Thus, the conclusion of trial would certainly take sufficient long time. The petitioner undertakes to abide by all the terms and conditions imposed by this Court and also to cooperate the proceedings/trial being faced by him, in case, he is granted the concession of bail.

5. On the other hand, learned State counsel has not disputed the various aspects of the case i.e. the date of arrest of the accused, the presentation of challan and pendency thereof till date and that the name of the petitioner did not figure in the FIR. Similarly, it also could not be denied that pistol of 9 MM bore alleged to have been recovered at the instance of the petitioner was not used during the course of occurrence because as per FSL's report, the shots were fired from a firearm, another pistol, which prima facie proved fatal. However, he has submitted that taking into consideration the seriousness and gravity of offence complained of against the petitioner, he is not entitled for the concession of bail.

6. After bestowing due consideration to the rival submissions made by learned counsel for the parties and perusing the record, this Court is of the considered view that a case is made out for grant of bail to the petitioner, in view of the various factors referred to hereinafter.

7. Undoubtedly, the petitioner was not arrested at the spot and subsequently, on the basis of disclosure statement allegedly suffered by co-accused Rajinder Singh @ Mintu, he has been nominated as one of the accused. During his custodial interrogation, the petitioner is alleged to have suffered a disclosure statement, in pursuance of which, he got recovered 9 MM bore pistol along with 4 live cartridges. Here, it would be pertinent to mention that even as per the case of prosecution, fire arm recovered from the petitioner is prima facie proved not to have been used during the course of occurrence and the pistol of 9 MM bore recovered from the co-accused was used as per the report of Forensic Science Laboratory. The petitioner is cooling his heels behind the bars since the date of his arrest i.e. 03.04.2013 i.e. for the last 3 years and 6 months. The trial is also proceeding at a snail's pace. Otherwise also, keeping in view the number of witnesses cited by the prosecution and to be examined, the disposal of trial is also not likely in the near future and would certainly take sufficient long time. The entire case of the prosecution hinges upon circumstantial evidence. Even the author of the FIR has not specifically named the culprits in the FIR. Moreover, no specific role or injury has been attributed to the petitioner. Culpability of the petitioner, if any, is a matter of evidence.

8. Taking into consideration the aforesaid aspects but without expressing any opinion on the merits of the case, petition is allowed and petitioner is ordered to be released on bail on furnishing his personal bonds in a sum of ₹2 lacs with one surety of like amount to the satisfaction of Id. trial court/Duty Magistrate, subject to the further conditions that (i) the petitioner shall not directly or indirectly make any inducement, threat or promises to any person(s) acquainted with the facts of the case so as to dissuade him/them from

disclosing such facts to the Court; and shall appear on each and every date of hearing; and to cooperate during the trial.

September 30, 2016
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No