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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-11353 of 2017

Date of decision: May 23, 2017

Kulwant Singh

.....Petitioner

Versus

Central Bureau of Investigation

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. J.S. Bedi, Senior Advocate with
Mr. Gurbir Singh Dhillon, Advocate for the petitioner.

Mr. Sumeet Goel, Retainer counsel with
Mr. Sangram Singh, Advocate for the respondent-CBI.

Mr. R.S. Rai, Senior Advocate with
Mr. Gautam Dutt, Advocate for the complainant.

A.B. CHAUDHARI, J (Oral)

This is 9th petition under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') for grant of regular bail, arising out of FIR No.56 dated 19.12.2010, under Sections 302, 307, 148, 149, 120-B of the Indian Penal Code, 1860 (for short 'IPC') and Sections 25, 27, 54, 59 of Arms Act, 1959 (for short 'Act'), registered at Police Station Balongi, District SAS Nagar and now FIR No.RC51-2012 (S)/0009/2012 dated 13.12.2012, under Sections 302, 307, 326,, 324, 201, 34 of IPC and Sections 25, 27 of the Act, registered at Police Station CBI/SCB, Chandigarh.

In the aforesaid FIR, the petitioner was arrested on 03.02.2011. The prosecution's allegations against the petitioner are that

he had fired with his .12 bore rifle towards the complainant which hit his father Rattan Singh on his head and he fell down. When he tried to lift him, Dilbar Singh brother of the petitioner fired at him with his .12 bore rifle with an intention to kill him hitting him on left leg, right ankle and back. He took his father to the Hospital in the vehicle who died. Kulwinder Kaur-complainant-sister, was hit on her left leg because of the fire injuries and she is the injured witness.

Learned Senior counsel for the petitioner contended that this Court has rejected the bail petitions numbering 8 over the period of last 7 years and this is the 9th petition for grant of regular bail to the petitioner. Pointing out various earlier orders rejecting petitions filed by the petitioner, he submitted that this Court every time made order expediting the trial and on that ground, regular bail was refused. Learned Senior counsel then submitted that in the case of Dilbar Singh versus CBI, in CRM-M-4465 of 2017, decided on 16.03.2017, this Court had specifically observed that the prosecution ought to examine Kulwinder Kaur, injured witness due to bullet injury and as all other material witnesses are examined and that the trial could not allow to be conducted with a snail speed. This Court, therefore, granted bail to Dilbar Singh and also imposed condition not to enter limits of village Baryali, Tehsil and District SAS Nagar (Mohali) till the examination-in-chief and cross-examination of Kulwinder Kaur is completed. Learned Senior counsel submitted that this order was made on 16.03.2017 and even now, the prosecution has not examined Kulwinder Kaur. According to him, the prosecution deliberately wants

to delay the trial. He, then submitted that even in respect of pending appeals in the higher Courts, the Supreme Court in the case of **Hussain and another versus UOI and others**, 2017 (2) R.C.R. (Criminal) 312, considered period of 5 years pending appeal as good enough to grant suspension of sentence/bail. He therefore, prayed for grant of regular bail to the petitioner.

Per contra, Mr. Sumeet Goel, learned counsel for CBI and learned Senior counsel for the complainant vehemently opposed the present 9th petition for grant of regular bail to the petitioner. According to learned counsel for CBI, the trial would be completed within a reasonable time and therefore, there is no need to grant regular bail to the petitioner, as according to him, he is the main person who had fired shot at the father of the complainant who died because of injury on his head. The other material witnesses have been examined and their evidence has been recorded. Learned counsel also contended that it was the petitioner who was responsible for delaying the trial as he was found to have misuse the jail facilities and was found to be notorious person involved in the illegal activities despite being in jail. Learned Senior counsel for the complainant vehemently opposed the petition on the ground that this is the 9th bail petition when the petitioner has applied for bail and this Court instead of granting regular bail to the petitioner again made order for expediting the trial. They, therefore, prayed for rejection of petition for bail.

Having heard learned counsel for the rival parties at length,

at the outset, I find that in all the previous petitions for bail, this Court

had observed that the trial should be expedited and completed within a reasonable period. Even, in the last order made by me in respect of co-accused, on 16.03.2017, it was observed that all the material witnesses have been examined and the only remaining witness was Kulwinder Kaur and therefore, she must be examined immediately. Now from the date of that order, i.e. 16.03.2017, this is an admitted fact that Kulwinder Kaur has not even been summoned as a witness. There is thus, clear-cut relation on the part of the prosecution not to obey the said order to examine Kulwinder Kaur. There is no explanation as to why Kulwinder Kaur was not examined despite the order made by this Court, on 16.03.2017. The prosecution, has thus, clearly destroyed the right of the petitioner to have a speedy trial which has been recognized by the Apex Court time and again. In my opinion, the period spent by the accused in jail till date is good enough to grant regular bail ofcourse with conditions. The submission made by learned counsel for the complainant about the jail activity of the petitioner does not appeal to me because it is for the State to look after its jail and prevent the activities in the jail, but that cannot be ground to deny liberty. To conclude, I find that the period of 7 years spent by the petitioner in jail as under trial and the manner in which the trial is being conducted, entitles the petitioner to grant bail, with conditions which were imposed in the case of co-accused-Dilbar Singh.

In that view of the matter, this petition is allowed.

Petitioner is ordered to be released on bail subject to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned. Petitioner

shall not enter the limits of village Baryali, Tehsil and District SAS Nagar (Mohali) till the examination-in-chief and cross-examination of Kulwinder Kaur is completed and shall not apply for modification of this condition, till then. Petitioner shall make attempts to examine the remaining witnesses and complete the trial as expeditious as possible. Petitioner shall not tamper with the prosecution evidence, threaten or exercise any influence on the prosecution witnesses. The CBI/complainant will be at liberty, if need be arise.

(A.B. CHAUDHARI)
JUDGE

May 23, 2017

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No