

S.No.211

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

CRM-M-14578 of 2018 (O&M)

Date of Decision:16.08.2018

Vishnu Kamal

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. S.P.S. Sidhu, Advocate
for the petitioner.

Mr. K.S. Aulakh, DAG, Punjab.

Mr. A.S. Manaise, Advocate
for the complainant.

Rajbir Sehrawat, J.(Oral)

The present petition has been filed by the petitioner under Section 439 Cr.P.C for grant of bail pending trial in case rapat No.24 dated 18.08.2017 registered under Sections 302, 307, 120B IPC and 25/27/54/59 of Arms Act, at Police Station City II, Abohar, District Fazilka registered as cross version of case bearing FIR No.91 dated 18.08.2017 registerd under Sections 307, 324, 323, 506, 148, 149 IPC at Police Station City II, Abohar, Districit Fazilka.

Counsel for the petitioner submits that in fact the petitioner himself is the complainant in the case whereby he has reported the matter of attack upon him to the Police. As per that version, the deceased along with some other persons had come to the shop of the petitioner along with daang, kapa and other weapons. They started causing injuries to the petitioner. To defend himself against the indiscriminate injuries, the petitioner resorted

to fire with his licenced revolver. The petitioner, later on came to know that out of the persons injured with the shot fired by him, two persons have lost their life.

Therefore, it is contended by the counsel for the petitioner that in fact it was not an intentional murder caused by the petitioner. At the best, the case was punishable under Section 304 IPC. Counsel further contends that the petitioner is in custody since 04.09.2017. In the incident, even the petitioner had received several injuries including injuries on his head. The charge in the case has not yet been framed by the Court. Therefore, the trial is likely to take long time. The petitioner is not required for any investigation purpose. Hence, no purpose would be served by keeping the petitioner in custody.

On the other hand, Mr. A.S. Manaise, counsel appearing for the complainant in the cross version has submitted that it was the petitioner who had called them to his shop for some arrangement of compromise in another incident of fight and the petitioner started attacking the persons including the deceased. He further submits that in fact the complainant side is receiving threats from the side of the petitioner. For that purpose, even an FIR has been registered against one R.D. Bishnoi at the instance of the injured person.

Learned counsel for the State, being instructed by ASI Balwinder Singh, does not dispute that the charge is yet to be framed and that the petitioner is in custody since 04.09.2017. However, his contention is that there are only three private witnesses in the case and since the cross

complainant side has expressed apprehension qua their security, therefore, it would not be in the interest of justice to release the petitioner on bail till the private witnesses are examined by the Court.

As an answer to a query, counsel for the State has submitted that the prosecution shall complete the evidence of the three private witnesses within a period of three months from the date of framing of the charge.

In response to this, counsel for the petitioner submits that it has been admitted by the cross complainant side that they belong to the ruling part of the State and that the petitioner side belong to the Opposition Party, therefore, any FIR qua the threat to the witness is only a manipulation. Hence, such an argument of the complainant cannot be given much weight. However, the counsel submits that he does not have any objection if the relevant witnesses are examined by the prosecution within a period of three months and till then he remains in custody.

Although the State has the privilege to keep a person in custody during pendency of the trial, however, there has to be a balance between the right of the individual and interest of the State. Since the petitioner has been in custody for about 11 months now and the trial is yet to be started, therefore, his further incarceration, despite the fact that the investigation of the case stands completed, would not be appropriate. Moreover, since it is a case of version and cross-version; which is supported by a Video CD on record, therefore, the ultimate finding as to the guilt of the petitioner, whether under Section 302 IPC or 304 IPC, is a moot point. But the interest

of prosecution can also not be ignored. Therefore, in the fitness of things, it would be appropriate if the prosecution is allowed three months' time to examine the relevant private witnesses, and till then the petitioner is not released on bail, to ensure that the witnesses are not threatened. However, after the examination of such witnesses, it would not be justified to keep the petitioner in custody.

In view of the above, but without any further commenting upon the merits of the case, the present application is allowed. The petitioner is ordered to be released on bail on the date on which the prosecution completes the examination of three private witnesses or on completion of 3 months from the date of framing of the charge, whichever is earlier. The petitioner shall be released on bail on his furnishing bonds/ sureties to the satisfaction of the trial Court. The prosecution shall examine the three private witnesses within the next three months after the date of framing of the charge. The trial Court is directed to frame the charge, considered appropriate by it, on the next date of hearing.

August 16, 2018
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No