

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-21818-2019 (O&M)
Date of decision: 16.05.2019

Iqbal Singh

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Navkiran Singh, Advocate
for the petitioner.

Mr. Sidakmeet Sandhu, AAG, Punjab.

Mr. Bipan Ghai, Sr. Advocate with
Mr. Vishavjit S. Virk, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for cancellation of regular bail granted to respondent No.2 Jatinderveer Arora @ Jimmi by this Court, vide order dated 25.04.2019 passed in CRM-M-17350-2019, in FIR No.161 dated 20.10.2015 under Sections 295-A, 120-B IPC, registered at Police Station Dayalpura, District Bathinda.

On 25.04.2019, the lawyers were abstaining from work and were on strike. Since respondent No.2 and co-accused Deepak Kumar were in judicial custody, after hearing the Investigating Officer ASI Nachhatar Singh, following order was passed by this Court: -

“These petitions have been filed under Section 439 of the Code of

Criminal Procedure for grant of regular bail to petitioners Deepak Kumar and Jatinderveer Arora alias Jimmi in case FIR No. 161 dated 20.10.2015, registered under Sections 295-A and 120-B of the IPC at Police Station Dialpura, District Bathinda.

As per the allegations in the FIR registered on 20.10.2015, complainant Iqbal Singh stated that he is the President of Local Gurudwara Committee of the village and at about 5.30 AM, the Granthi of the Gurudwara, namely Roop Singh, informed him that the pages of Guru Granth Sahib were scattered on the Phirni (link road of the village) and on the platform of 'Bohar'. Thereafter, complainant along with one Satnam Singh went to the spot and collected the pages of holy Granth. The FIR was registered with the allegations that the incident has deeply hurt the sentiments of the followers of Guru Granth Sahib.

It is submitted in the petition, filed by petitioner Deepak Kumar, that initially nobody was named in the FIR and the petitioner was nominated after a period of three years of the incident on the basis of a supplementary statement made by the complainant without there being any explanation of delay.

It is further submitted in the petition that petitioner is in judicial custody since 03.11.2018; the investigation is complete and challan stands presented and the conclusion of the trial is likely to take a long time.

ASI Nachhatar Singh, who is present in Court, has not disputed the fact that investigation is complete and the petitioner is

in judicial custody since 03.11.2018, however, submitted that one more case of the similar nature is pending against the petitioners in the same police station i.e. FIR No. 89 dated 26.06.2016, registered under Sections 295-A and 120-B of the IPC.

In the petition, filed by petitioner Jatinderveer Arora alias Jimmi, it is additionally submitted that the petitioner is in judicial custody since 08.11.2019.

Without commenting upon the merits of the case, considering the facts that the petitioners are in judicial custody since 03.11.2018 and 08.11.2018, respectively and they are no more required for further investigation and also in view of the fact that conclusion of the trial is likely to take some time, the instant petitions are allowed. Petitioners Deepak Kumar and Jatinderveer Arora @ Jimmi are ordered to be released on regular bail on their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate concerned.”

Learned counsel for the petitioner submits that though the FIR was registered in 2015, however, accused Jatinderveer Arora @ Jimmi was arrested on 01.12.2018 and thereafter, he made a statement under Section 164 Cr.P.C. to the following effect: -

“Statement of Jatinderveer Arora s/o Manohar Lal Arora aged 28 years r/o Dasmesh Nagar, Street No.2, Bhagtan Bhai Ka, Tehsil Phool, District Bathinda.

I have been produced in your Court today and I want to tell some facts in your Court. Kindly record my statement which is

being stated by me.

*Sd/-
Jatinderveer Arora*

Confession under Section 164 Cr.P.C.

Q: - For what work have you come to Court today?

Ans: - I have come to Court as I want to state some facts.

Q: - On the last date also you had got your statement recorded in the Court, were you under any type of pressure?

Ans: - I got that statement recorded as I got perplexed, that I recently got married. That my future will be spoiled if I admit my crime. I have also cleared IELTS. My dream of going abroad will be ruined. Hence, I got perplexed & got the statement recorded.

Q: - You are not bound to get your statement recorded today?

Ans: - Yes, I have understood that, even then I will get my statement recorded.

Q: - In case you get your confessional statement recorded then this statement can be used as evidence against you?

Ans: - Yes, I have understood this thing, I want to get the statement recorded.

Q: - Are you getting your statements recorded with your own will? Whether anyone has threatened, lured or pressurized you for getting the statement recorded?

Ans: - Yes. I have not been lured, threatened or pressurized for getting the statement recorded by anyone, I am getting my confessional statement recorded with my free will.

Q: - Have you understood the questions properly which were asked to you?

Ans: - Yes. I have understood.

Q: - What do you want to say?

Ans: - Approximately on 2nd October, 2015 Prithi of Bagha Purana called me around 6 pm on Phone No.98725-51555 from Prithi's number 98884-36159 that Harsh has called you at Dera tomorrow & come alone & on the next day I reached Sirsa at 10 am in the morning. Prithi met me there. He sent me to old Admin-Block Room No.4. Sandeep Bureta, Harsh Dhuri & ____ Kaler were already sitting there & for the meeting, they made me swear on oath whether we will talk that will not be disclosed to anyone. Neither our movie was allowed to be released in Punjab nor the satsang was allowed to be held. That due to Sikhs our movie was not released and since I had not done anything for Dera, I was told that you have not done anything for Dera. Then said that you will have to do one thing for Dera, will you do it? I said yes, I will do it and then said we will give you Granth of Sikhs and you have to sacrilege it. I came back from that meeting. After few days, I called Davinder Singh Hariya Wala on phone to ask about his well-being. Approximately after 7-8 days I asked him if he has got any work or not. My work is all set and your work will be done soon, that your stuff will reach you soon. On 16th I got a phone call from Deepak Malot that Harsh has sent some stuff of yours. Come & collect it from Bathinda. I collected the stuff from him from

Malot Road, Bathinda. I came back to Bhagte. I called for a meeting at Rajveer's shop. I asked Rajveer to call some persons around in the evening. At 6 PM, Kuldeep, I, Baljeet, Rajveer Singh, Sukhmander Singh, Krishan Kumar Verma, Rajinder Kumar Babbu gathered at the shop. I raised the same slogan that I told them that Management has asked us to throw some pages and we have to scatter it. We made a plan that we will scatter it in Bhagte but at Gurusar. We made a plan that we will do this work on 20th early morning. That I did not take the bag containing pages to my house but kept it at the house of Sukhmander because I had not told anyone at my house thereafter on 20th around 4.30 am I went to Sukhmander's house and Rajveer had also come there on his motorcycle and I took the bag containing pages and sat with Kuldeep Singh & Rajveer Singh, Baljeet Singh & Sukhmander Singh were on second motorcycle & after that we proceeded towards the village and after reaching there we distributed half-half pages among ourselves and I and Kuldeep turned towards the left periphery of village and other motorcycle went inside the village. After that I scattered it at 2-3 places & they also scattered it at 2-3 places and then we straight away went to our houses. Rajveer went to Bhagte through Aakiye road. After that I called Prithi around 2 pm that work has been done. That's it. I want to say this much only. Apart from this, whatever happened at Bhagte & Buldozer colony in that pages were of Pothi, which Gurpavittar had got from Rajinder Babbu & handed over to Rajveer for

scattering it in Buldozer colony, Rajveer, Sukhmander, Baljeet Singh went to Buldozer colony & scattered it there. Apart from these, such instances have occurred at Bhagte bhootan wala Khooh and Mehal Sahib, Gulpavittar got those done. About which I got to know almost after a week of the incident. That's it. I do not want to say anything else."

Learned counsel for the petitioner further submits that thereafter, on the basis of statement under Section 164 Cr.P.C., the petitioner was nominated in four other FIRs i.e. (i) FIR No.79 dated 04.11.2015 under Sections 295-A, 295 IPC, Police Station Smalsar, District Moga, (ii) FIR No.86 dated 21.06.2016 under Sections 295-A, 120-B IPC, Police Station Dayalpura, District Bathinda, (iii) FIR No.89 dated 26.06.2016 under Sections 295-A, 120-B IPC, Police Station Dayalpura, District Bathinda and (iv) FIR No.98 dated 03.07.2016 under Sections 295-A, 120-B IPC, Police Station Dayalpura, District Bathinda. It is argued that the offence under Section 295-A IPC is a serious offence, as it pertains to sacrilege of the holy book of Shri Guru Granth Sahib. Learned counsel has further argued that respondent No.2 has acted at the dictum of head of Dera Sacha Sauda Gurmeet Ram Rahim Singh, as one of his film was not permitted to be released in Punjab, because his preachings were hurting the religious sentiments of Sikh community at large. It is thus submitted that respondent No.2 has committed the serious offence punishable under Section 295-A IPC and therefore, he is not entitled to bail. In fact, respondent No.2 was trying to flee from the justice and he was arrested from the airport.

It would be relevant to mention here that some other regular bail petitions of other co-accused including respondent No.2 Jatinderveer Arora @

Jimmi are pending for today and the same are also being heard and decided together vide separate orders of even date.

Learned State counsel, on instructions from the Investigating Officer, assisted by learned senior counsel for respondent No.2 has however opposed the prayer on the ground that in fact respondent No.2 had gone to Malaysia and when he was returning to India, he was arrested and therefore, ground for cancellation of bail that he is trying to flee from the justice, is apparently not made out. It is argued that statement under Section 164 Cr.P.C. was recorded in the present FIR, after respondent No.2 refused to record the statement under Section 161 Cr.P.C., the fact which is recorded by the Illaqa Magistrate, when respondent No.2 was produced before him.

Learned senior counsel, with reference to confessional statement under Section 164 Cr.P.C., submits that it is made after a gap of more than 03 years and in the intervening period, there is no allegation against respondent No.2-accused that he has committed or repeated any such offence and he is being implicated in this case only because he was follower of the Dera. It is further submitted that the investigation is complete; challan stands presented; offence under Section 295-A IPC is triable by the Court of Magistrate, for which maximum punishment is of three years and till date, charges have not been framed, therefore, respondent No.2 was rightly granted the concession of regular bail by this Court vide order dated 25.04.2019.

In reply, learned counsel for the petitioner has relied upon judgments of the Hon'ble Supreme Court in **Puran Vs. Rambilas, 2001(2) RCR (Crl.) 801, Anwari Begum Vs. Sher Mohammad and another, 2005 (4) RCR (Crl.) 148, Deepak Singchi Vs. State of Rajasthan and another,**

2007 (3) RCR (Crl.) 1013, Guria, Swayam Sevi Sansthan Vs. State of U.P. and ors., 2009 (3) RCR (Crl.) 963 and Ash Mohammad Vs. Shiv Raj Singh @ Lalla Babu and another, 2013 91) RCR (Crl.) 277.

The Hon'ble Supreme Court in **Puran's** case (supra) has held that the grounds, on which the bail can be cancelled are; (i) if ignoring material evidence is on record and the perverse order granting bail is passed in a heinous crime under Section 304-A IPC, (ii) offence under the Dowry Act are on rise and have serious impact on the society.

In **Anwari Begum's** case (supra), the Hon'ble Supreme Court has held that the Court, while cancelling the bail in an offence punishable under Section 302 IPC, is required to look into the factors; (i) nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering of the witness or apprehension of threat to the complainant, or (iii) any order *de hors* of such reasons suffers from non-application of mind.

In **Deepak Singchi's** case (supra), while dealing with a case under Section 302 IPC, the Hon'ble Supreme Court has again held that wherein an accused is charged of having committed serious offence, the Court is required to indicate the reasons, while granting bail and in this case, considering the fact that accused was granted bail long time back, has opined that it will not be appropriate to cancel the bail at this stage.

The Hon'ble Supreme Court in **Guria's** case (supra), while dealing with a case pertaining to Immoral Traffic (Prevention) Act, 1956, on the basis of statement of the girls, who were rescued from brothel, observed that it is not a case for grant of bail considering the gravity of offence.

In the judgment of **Ash Mohammad's** case (supra) pertaining to Section 366, 359 to 365 IPC, the Hon'ble Supreme Court has held that where an accused was a history sheeter with 30 criminal cases, pending against him, though it may not be understood that a history sheeter is never entitled to bail but it is a significant factor to be taken note of and period of custody is relevant factor but simultaneously the totality of circumstances and criminal antecedents are also be weighed.

After hearing learned counsel for the parties and going the allegations in the FIR, I find no ground to cancel the bail granted to respondent No.2, for the following reasons: -

- (a) The FIR pertains to 20.10.2015, whereas respondent No.2 was arrested after a period of three years on 01.12.2018 and there is no allegation that in the intervening period, he is involved in any such incident.
- (b) The only evidence against the petitioner is his confessional statement recorded under Section 164 Cr.P.C. It is worth noticing here that at the first instance, he refused to make the statement under Section 161 Cr.P.C. It is relevant to reproduce the order dated 22.11.2018 passed by the Judicial Magistrate 1st Class, Phul and the same reads as under:-

“Today accused Jatindervir Arora has produced on production warrant on his request which has been forwarded by Superintendent New District Jail Nabha and today the accused Jatindervir Arora apprised the court with regard to confession of the offence. However the undersigned has started recording the statement and while

apprising the provision of Section 164 Cr.P.C. with regard to the fact that accused is not bound to make the statement under Section 161(2) Cr.P.C., then accused got recorded his statement that he has been threatened with the life threat, under these circumstances undersigned not opted to record his confession u/s 164 Cr.P.C. Let SSP, Bathinda as well as Superintendent New District Jail Nabha are directed to ensure the safety of accused Jatindervir Arora. All the accused be produced through VC on 01.12.2018. Copy of this order be sent to SSP, Bathinda.”

- (c) A bare perusal of the FIR shows that the same was registered on the statement of complainant-petitioner Iqbal Singh that pages No.1273 to 1480 of Shri Guru Granth Sahib were thrown at a place near road by unknown persons, which is hurting the religious sentiments of Sikh community. In the FIR, nobody was named. As noticed above, respondent No.2, for the first time, was arrested in 2018 and thereafter, he has recorded the statement under Section 164 Cr.P.C. and it is yet to be decided during the trial whether he made the statement voluntarily, in view of the facts noticed above.
- (d) There is no averment in the petition that respondent No.2, if released on bail, will extend any threat to any of the witness or misuse the concession of bail. It is worth noticing that respondent No.2 is still in judicial custody.
- (e) There is no dispute about the guidelines laid down by the Hon’ble Supreme Court in the aforesaid judgments relied upon by learned counsel for the petitioner, however, the order dated 25.04.2019, granting bail to respondent No.2 was passed considering the length

of custody, completion of investigation, non-framing of charge, as respondent No.2 was never produced before the Court and also considering the fact that he was arrested after three years, therefore, I am of the opinion that the petitioner-complainant has failed to make out a case that any material evidence was ignored or the order is perverse.

- (f) No doubt, offence under Section 295-A IPC relates to hurting the religious sentiments, however, considering the fact that in the intervening period of three years, there is no allegation against respondent No.2 that he has repeated any such offence and except the aforesaid FIRs, which relates to a chain of FIRs registered at different places, regarding same/similar incident, at this stage, respondent No.2 cannot be termed as history sheeter.
- (g) It is also worth noticing here that the offences are triable by the Court of Magistrate and the maximum punishment is of three years, out of which respondent No.2 has undergone the substantive judicial custody, when he was granted bail.

In view of the above, finding no ground to cancel the regular bail granted to respondent No.2 vide order dated 25.04.2019 passed by this Court in CRM-M-17350-2019, present petition is dismissed.

16.05.2019
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No