

CRM-M-50766-2019 (O&M)

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

Decided on: December 17, 2019.

(1)

CRM-M-50766-2019 (O&M).

Pancham Noor Singh

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

(2)

CRM-M-51623-2019 (O&M).

Sanjay Kumar

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

(3)

CRM-M-52170-2019 (O&M).

Love Kumar

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

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CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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**PRESENT Mr.Ankur Bansal, Advocate,
for the petitioner in CRM-M-50766-2019 (O&M).**

**Mr.Balram Singh, Advocate,
for the petitioner in CRM-M-51623-2019 (O&M)
and CRM-M-52170-2019 (O&M).**

**Mr.Randhir Singh Thind, DAG, Punjab, assisted by
ASI Avtar Singh.**

JASGURPREET SINGH PURI, J. (ORAL)

These three petitions have been filed by the three petitioners i.e. CRM-M-50766-2019, filed by petitioner Pancham Noor Singh; CRM-M-51623-2019 filed by petitioner Sanjay Kumr and CRM-M-52170-2019, filed by petitioner Love Kumar, under Section 438 of the Code of Criminal Procedure (for short 'the Cr.P.C.') praying for grant of anticipatory bail in FIR No.147 dated 5.11.2019, under Section 336 IPC and Sections 25 and 27 of the Arms Act, 1959 and under Section 67 of the Information Technology Act, 2000, registered at Police Station Division No.7, District Jalandhar.

In total four persons have been named in the FIR besides some unknown persons and out of 4 accused, three of them have approached this Court seeking the concession of anticipatory bail.

Since three different petitions have been filed pertaining to one common FIR, the facts of all the three cases can be described

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individually as follows:-

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The FIR in the present case has been registered on the basis of video clipping which was circulated in social media that certain people had assembled at a particular place which is stated to be a marriage function/party where blank firing in the air had⁴ taken place by some persons.

On that basis, the police registered the FIR against four persons including some unknown persons as well.

The petitioner has approached this Court by filing the present petition claiming that he has been falsely implicated in the present case because he neither possess any arms licence nor did he fire from any fire-arm in the party. It was the categorical case of the petitioner that there was no fire from the fire-arm and that on the basis of video clipping, it can be ascertained that he did not make any blank fire from the arm. The two revolvers which were ultimately recovered by the police did not belong to the petitioner as claimed by him and further it is also stated that he did not have any licence to operate the said revolver.

Notice in this petition was issued to the State of Punjab and it was directed vide order dated 3.12.2019, that the State of Punjab would file a specific affidavit with regard to the contentions raised by the learned counsel for the petitioner that there was no fire from the fire-arm at all.

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Affidavit of Mr.Dharam Paul, Assistant Commissioner of Police, Model Town, Jalandhar dated 17.12.2019, along with Annexure R-1, detailing seven other cases pending against the petitioner is filed today in the court and the same is taken on record.

It has been stated in the affidavit that in order to verify the said video, it was found that the said video was of dated 28.10.2019, in the marriage of Harvinder Singh alias Goldy son of Manjit Singh in village Subhana, District Jalandhar and in the said function Harvinder Singh alias Goldy had invited his friends and his brother Kabal Singh alias Gota and his friends. It has been further stated that the petitioner Pancham Noor Singh was also invited and was present in the marriage party and during marriage party, the other co-accused Love Kumar and Sanjay Kumar, who are brothers had brought their licensed .32 bore revolvers and from those weapons, Pancham Noor Singh (petitioner), and his companions were firing with those weapons. Therefore, the present FIR was registered in the present case. It has been further stated in the affidavit that thereafter investigation was initiated and the houses of both the co-accused Love Kumar and Sanjay Kumar were raided and their father had produced two .32 bore revolvers, their licences and 20 live cartridges, which were taken into possession vide recovery memo.

Thereafter, Love Kumar and Sanjay Kumar, have filed separate petitions for the grant of anticipatory bail which were dismissed by the learned Additional Sessions Judge, Jalandhar. However, the present petitioner was granted interim bail by this Court.

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In the affidavit by the above stated official, it has been specifically stated in para 5 that during the course of investigation, it has been revealed that frequent firings were made in the air by petitioner Pancham Noor Singh and it has been further stated that the investigation with regard to other persons is also going on. Further during investigation, petitioner Pancham Noor Singh, made a disclosure statement to the Investigating Officer that he along with co-accused in this FIR namely Rishu Prashar son of Kanwarjit Singh of Rasta Mohalla, Jalandhar, went to the marriage party at village Subhana, Jalandhar where other two co-accused Love Kumar and Sanjay Kumar were also present. Both Love Kumar and Sanjay Kumar had brought their licenced .32 bore revolvers along with them. Both the co-accused i.e. Love Kumar and Sanjay Kumar were earlier known to present petitioner Pancham Noor Singh. It has been further stated by the petitioner in his disclosure statement that in the marriage function co-accused Love Kumar started firing in air from his licensed weapon .32 bore. He further stated that he had fired in air from a licensed revolver .32 bore owned by co-accused Sanjay Kumar and after firing he returned the same weapon to owner and co-accused Sanjay Kumar.

Since petitioner Pancham Noor Singh was granted interim protection by this Court, he joined the investigation and during investigation, he has also revealed about the above case but the shells of the cartridges used in the incidence of firing are still needed to be recovered and therefore, in the affidavit, it has been prayed that the petitioner is required for custodial interrogation as the matter is serious in nature.

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Along with affidavit, the concerned officer has also attached a list of 7 cases which are pending against petitioner Pancham Noor Singh and out of these 7 cases, 5 cases pertain to offences under the Arms Act.

The learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the case because there was no fire from the fire-arm by the petitioner in the party.

Learned State counsel, on instructions from ASI Avtar Singh, submits that the petitioner was earlier also facing 7 cases out of which 5 are pertaining to Arms Act and that on investigation, it was specifically revealed that the petitioner had fired from the fire-arm of which he was not even the owner or licence holder of the fire-arm and therefore, the matter would attain seriousness and custodial interrogation is required. He, therefore, prays for dismissal of the present petition.

CRM-M-51623-2019 (O&M)

This petition has been filed by one of the co-accused Sanjay Kumar with the set of claims that the FIR registered against him is false and there was no firing from the fire-arms at the said function. It is not disputed by either of the parties that Sanjay Kumar holds a licensed .32 bore revolver in his name.

In this petition also an affidavit of Mr.Dharam Paul, Assistant Commissioner of Police, Model Town, Jalandhar dated 17.12.2019, has been filed today in the court which is taken on record.

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It has been stated in the affidavit that after the registration of the case, the investigations were started on the same day and the house of the petitioner and his brother Love Kumar were raided and the petitioner's father namely Mahi Lal, produced .32 bore revolver, their licences and 20 live cartridges which were taken into possession vide recovery memo. It was further stated that both the accused brothers were not available at their residence. It is further stated in the affidavit that from the bare perusal of the Arms Licenses of both the weapons it , it was found that 25/25 cartridges were entered on the licenses but father of petitioner Sanjay Kumar has produced only 20 live cartridges. It is further stated that the report of the FSL Lab, Mohali, regarding these two .32 bore revolvers used in the incidence of firing is still pending.

The learned State counsel has argued that the report of FSL is still awaited and the purpose of getting the laboratory reports is to ascertain as to whether at all any fire was shot from the alleged revolver or not.

Be that as it may, he has further argued that all these things pertaining to the report of FSL and recovery of 25 live cartridges from Sanjay Kumar would be an extremely relevant factor for further investigating the case by taking the petitioner into custody. He has substantiated his case from the fact that there are total 50 cartridges as per the licences of both brothers and only 25 cartridges have been recovered which have been produced by the father of the petitioner.

On the other hand, learned counsel for the petitioner has

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argued that once 25 cartridges which were validly held by the petitioner have been handed over to the police, the petitioner is entitled to seek indulgence of this Court particularly in view of the fact that the report of FSL is still awaited. He has further argued that, at the most, offence under Section 336 IPC, only has been made out and no offence under the Arms Act is made out and therefore, he prays that petitioner be granted the concession of anticipatory bail.

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The present petition has been filed by petitioner Love Kumar who is also son of Mahipal and is real brother of Sanjay Kumar.

In this case though notice of motion was issued, however, interim protection was not granted to the petitioner. The facts of this case and that of Sanjay Kumar, are almost similar in nature. However, in the present case, there is no recovery of 25 cartridges which are mentioned in the license of Love Kumar.

The learned counsel for the petitioner submits that the petitioner will surrender 25 live cartridges before the police authorities.

On the other hand, learned State counsel has argued that live cartridges pertaining to Sanjay Kumar brother of the petitioner were recovered which were produced by the father of Sanjay Kumar who is also father of petitioner Love Kumar and therefore, the fact that the petitioner has been granted interim protection by the Court, is no ground for the grant of anticipatory bail. Learned State counsel has further argued that it is not

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necessary that they would be in possession of only 50 cartridges which are mentioned in the licenses pertaining to them and there is also a possibility that they could have got cartridges by some other method even without recording them in the licence and therefore, recovery of remaining cartridges, if any, as well as the report of the FSL, with regard to the fact as to whether shots were fired from the .32 bore revolver or not is yet to be seen.

Learned State counsel has further vehemently argued that in the video clip, Love Kumar has been specifically shown to have fired shot in the air as having been shown in the video clip and therefore, has prayed that the pre-arrest bail application be dismissed.

I have heard the learned counsel for the petitioners as well as the learned State counsel.

After describing the facts of all the three cases, there are certain facts which are common in all the three cases. The FIR in all the cases is common and the allegations are pertaining to the fact that the petitioners have participated in a common function wherein allegedly shots were fired in the air by petitioners regarding which a video clipping had gone viral and in pursuance thereof FIR was registered by the police. The allegations contained in FIR pertain to blank firing. The affidavits submitted by the concerned Police Officer in this Court specifically incorporate the fact that firing was done at the function. It is also not disputed that petitioners Love Kumar and Sanjay Kumar sons of Mahipal are real brothers and in one of the case i.e. petition pertaining to petitioner Sanjay Kumar, 20

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live cartridges were recovered from the father of the petitioner and 5 from Sanjay Kumar when the houses of these persons were raided by the police.

The argument raised by the learned counsel for the petitioner in Love Kumar's petition that 25 cartridges which are with him can be submitted to the police only in case he is granted concession of anticipatory bail does not hold good because 20 cartridges of Sanjay Kumar were produced by the father of petitioner Sanjay Kumar who is also father of Love Kumar petitioner. Apart from this, the argument raised by the learned State counsel that it is not necessary that they will be having only 50 cartridges which finds mention in the licenses is also a material factor. There can also be possibility that there are other cartridges with them which are not mentioned in the licenses which, of course, can be ascertained on appreciation of evidence and cannot be decided at this stage.

So far as the factum of firing in the air is concerned, the same has been specifically incorporated in the affidavits filed by the State that firing took place in the function and this fact with regard to firing can be substantiated also from the report of FSL which is awaited whereby an opinion can be obtained as to whether actually firing took place or not. The entire case of the petitioners rests on the issue that no firing took place at all. Therefore, the report of the FSL although pending is of utmost importance for further investigation of the case.

So far as the case of petitioner Pancham Noor Singh is concerned, admittedly, he did not possess any license with him but as per affidavit filed by the State, he has also indulged in firing in the air and apart

from that there are 7 other cases pending against him as per Annexure R-1 out of which 5 cases are pertaining to the Arms Act.

Learned counsel for the petitioners have argued that brandishing arms in air and making blank firing in air attracts only Section 336 of the Indian Penal Code and is not covered under the Arms Act, when two of the petitioners i.e. Sanjay Kumar and Love Kumar are holding valid arms licenses.

The argument raised by the learned counsel for the petitioners do not hold good in view of the notification issued by the Ministry of Home Affairs dated 15.7.2016, whereby rules were made under the Arms Act.

A perusal of Rule 32 of said Rules provides for restrictions on carrying of firearm in public place which is reproduced as under: -

Restrictions on carrying of firearm in public place.—

(1) No person shall carry a firearm in a public place unless the firearm is carried –

(a) in the case of a handgun –

(i) in a holster or similar holder designed, manufactured or adapted for the carrying of a handgun and attached to his person; or

(ii) in a rucksack or similar holder; or

(b) in the case of any other firearm, in a holder designed, manufactured or adapted for the carrying of a firearm.

(2) A firearm contemplated in sub-rule (1) must be

completely covered and the person carrying the firearm must be able to exercise effective control over such firearm.

(3) Brandishing or discharge of firearms or blank-firing firearms in any public place or a firearm free zone is strictly prohibited.

(4) Any violation of this rule shall be liable to revocation of the licence and seizure of the firearm in addition to the penalty specified under the Act.

A perusal of above said rules would show that it clearly prohibits that no person shall carry a firearm in a public place unless the firearm is carried in the case of a handgun in a holster or similar holder designed, manufactured or adapted for the carrying of a handgun and attached to his person; or in a rucksack or similar holder.

A perusal of sub rule 32 (3) further shows that brandishing or discharge of firearms or blank-firing firearms in any public place or a firearm free zone is strictly prohibited.

It is further provided in sub rule 4 that any violation of this rule shall be liable to revocation of the licence and seizure of the firearm in addition to the penalty specified under the Act.

These above said rules have been framed in exercise of the powers conferred by Sections 5, 9, 10, 11, 12, 13, 16, 17, 18, 21 and 41 read with Section 44 of the Arms Act, 1959 and are in supersession of the Arms Rules, 1962.

A perusal of Section 5 of the Arms Act, under which

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these rules have been framed specifically provides that use, manufacture, sell, transfer, convert, repair, **test or prove, or expose** or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any firearms or any other arm of such class or description as may be prescribed or any ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder. Further sub section (2) provides that notwithstanding anything contained in sub-section (1), a person may, without holding a licence in this behalf sell or transfer any arms or ammunition which he lawfully possesses for his own private use to another person who is entitled by virtue of this Act, or any other law for the time being in force to have, or is not prohibited by this Act or such other law from having in his possession such arms or ammunition. Further in Chapter 5, of the Arms Act, offences and penalties have been provided. Section 25 of the Arms Act, pertains to punishment for offences which specifically provides that violation of Section 5 of the Act would invite penalty. The rules which prohibit the brandishing or discharge of firearms or blank firing of firearms in any public place would invite penal consequences by virtue of provisions of Section 5 read with Section 25 of the Arms Act, 1959.

Learned counsel for the petitioners relies upon Section 30 of the Arms Act, which provides punishment for contravention of licence or rule, however, the present case does not pertain to condition of violation of licence but violation of Section 5 of the Arms Act and rules framed thereunder.

After hearing the learned counsel for the petitioners and considering the totality of the circumstances and facts of all the three cases, it can be said that although in two cases the petitioners have joined investigation but that does not confer any right upon those petitioners to seek the confirmation of the interim orders. After specific affidavits having been filed by the State and the position having been explained by the State in this behalf, the Court would always be conscious enough to consider as to whether concession of anticipatory bail should be granted in the given facts and circumstances of the case. It is a settled law that bail is not a matter of right. While granting concession of anticipatory bail, the Court has to strike a balance between the life and liberty of the petitioners on one hand and on the other hand, the Court would also see as to whether or not there is likelihood of tampering with the evidence or any other factor which the Court considers necessary. In the present case, it does not appeal to the conscious of this Court that the interim protection granted to two of the petitioners should be confirmed rather custodial interrogation of the petitioners is required. Moreover, this tendency of blank firing in parties which is becoming a fashion these days needs to be curbed.

Consequently, in view of above discussion, all the above said three petitions are hereby dismissed. Interim protection granted to petitioner Pancham Noor Singh vide order dated 3.12.2019 and to petitioner Sanjay Kumar vide order dated 5.12.2019 stand vacated.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the

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purpose of deciding the present petitions only.

A copy of the order be placed on the file of each connected case.

December 17, 2019.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No