

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

104

CRM-M-25034-2020

Date of decision: 08.10.2020

Amrinder Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. S.S. Behl, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. D.A.G., Punjab
for respondent No.1-State.

Respondent No.2/complainant did not appear
despite service.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present (first) petition under Section 439 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for grant of regular bail in case FIR No.31 dated 04.03.2020 registered in Police Station Kamboj, Amritsar Rural initially under Section 302 of the Indian Penal Code, 1860 and Sections 25 and 27 of the Arms Act, 1959 which were subsequently substituted by Section 304 of the Indian Penal Code, 1860 and Section 27 of the Arms Act, 1959.

The above said FIR was registered on statement of Lakhbir Singh who inter alia alleged that his son Nirwair Singh had agreed to sell certain articles to accused Amrinder Singh @ Sonu (the petitioner) for Rs.1,50,000/- and had taken money from him but lateron he sold the aforesaid articles to his brother-in-law Rashhpal Singh. Nirwair Singh promised to return the amount of Rs.1,50,000/- to the petitioner but could not return the said amount and went to Banglore for employment.

During the period when Nirwair Singh was residing at Banglore, the

petitioner used to visit the house of the complainant Lakhbir Singh to demand his money. About two months back Nirwair Singh returned from Bangalore and started working in a garment factory at village Bal Kalan. On coming to know about the same, the petitioner started visiting his house along with other persons. On 03.03.2020 at about 09:30 P.M., the complainant and his sons Nirwair Singh and Jagdish Singh went to the house of the petitioner to request the petitioner not to visit their house time and again along with different persons and not to insult them and to assure that they would return his money within one month. The petitioner met them at the gate. When they requested the petitioner to grant them time of one month, the petitioner started abusing them and took out a 12 bore gun from inside and fired direct shot on the chest of his son Nirwair Singh with an intention to kill him and his son died on the spot due to injury thereby caused.

The petitioner, who is in custody since his arrest on 04.03.2020, has filed the present petition for grant of regular bail.

The petition has been opposed by learned State Counsel in terms of reply filed by way of affidavit of Gurpartap Singh Sahota, P.P.S. Deputy Superintendent of Police, Sub-Division Attari, Amritsar (Rural).

Learned State Counsel has also filed custody certificate through e-mail print out of which is taken on record.

Notice was also issued to respondent No.2/complainant who did not appear despite service.

I have heard learned Counsel for the petitioner and learned State Counsel and gone through the relevant record.

Learned Counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case. The FIR has been registered on false and concocted version. On applications given by mother and brother of the petitioner, the Senior Superintendent of Police, Amritsar (Rural) conducted inquiry and submitted report concluding that complainant Lakhbir Singh and his son Jagdish Singh were not present at the spot at the time of the occurrence; that deceased Nirwair Singh and Mandeep Singh had taken liquor together and thereafter gone to the house of the petitioner; that they abused him

while standing outside the gate of house of the petitioner; that the petitioner fired a gun shot from inside of the house without opening the gate of the house which hit the deceased and that the petitioner exceeded the right of self-defence by firing a gun shot on the deceased which caused his death.

Learned Counsel for the petitioner has further argued that in fact the deceased along with his companion(s) trespassed to the house of the petitioner at late hour in the night with the motive of committing some offences and abused and frightened him and his family members by their overt acts. The petitioner was not aware about the number of the offenders. The deceased Nirwair Singh climbed gate of the house and when he was about to come down in the house of the petitioner, the petitioner fired in the dark from inside of his house so as to scare them away without aiming anybody in particular. There was no intention on the part of the petitioner to murder anybody. The gun shot fired to scare the offenders away incidentally hit the deceased. The petitioner legitimately exercised the right of his private defence. Challan has been presented in the case. Charges are yet to be framed. The trial is likely to take long time due to restrictions imposed to prevent the spread of infection of Covid-19. No useful purpose will be served by further detention of the petitioner in custody. Therefore, the petitioner may be granted regular bail.

On the other hand, learned State counsel has submitted that the petitioner exceeded his right of private defence and caused death of Nirwair Singh by firing gun shot at him and in view of nature of accusation and gravity of the offences alleged, the petitioner does not deserve grant of regular bail. Therefore, the petition may be dismissed.

Keeping in view the facts and circumstances of the case, nature of accusation and evidence against the petitioner, the fact that debatable question as to whether the petitioner legitimately exercised right of private defence or exceeded the same is involved and the fact that the trial is likely to take long time due to restrictions imposed to prevent the spread of Covid-19, but without commenting on the merits of the case, I am inclined to extend the concession of regular bail to the petitioner.

In view of the above, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of personal and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

08.10.2020

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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