

205.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-37123-2019

Date of decision: 04.12.2020

KAPIL JAITLEY

... Petitioner

versus

STATE OF PUNJAB

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Ms. Nupur Sood, Advocate, for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

HARI PAL VERMA, J. (Oral)

The matter has been taken up for hearing through video conferencing due to outbreak of COVID-19.

This is second petition filed by the petitioner under Section 439 Cr.P.C. for grant of regular bail, pending trial, in case FIR No.125 dated 26.07.2016 registered under Sections 302, 307, 148, 149 of IPC and Section 25 of Arms Act, 1959 at Police Station Sadar, District Amritsar.

The earlier petition filed by the petitioner in **CRM-M-44187-2016** was dismissed as withdrawn vide order dated 23.08.2017.

The aforesaid FIR was registered at the instance of the complainant Kulwant Singh, who is the brother of deceased Hardev Singh. As per the FIR, on 25.07.2016 at about 9.15 in the night, the complainant had gone to meet his brother Hardev Singh. 5-6 persons in a car and two persons on a motorcycle came with their respective weapons and entered the eatery (*ahata*) and started inquiring about the sons of his brother. Thereafter,

those persons started inflicting injuries with rifle and pistols on his brother. Subham and Rohit sons of Baljinder Singh, Dinesh Kumar @ Tinku, Bunny sons of Ashok Kumar, Ravi, Lakhani and 2-3 other unidentified persons were present there. Subham was carrying a rifle on his left shoulder and a pistol in his right hand and with the intention to kill, he fired a bullet shot from his pistol which hit his brother Hardev Singh in his left flank near heart and as a result thereof, he fell down on the ground in injured condition. However when Raju, who was working as helper with Hardev Singh at his tavern, came forward to save him (Hardev Singh), then Subham fired at him with the intention to kill him and it hit him in his stomach and Subham's other accomplices also fired. When the complainant and other persons who were standing outside the tavern raised hue and cry, then all the accused persons ran away from the spot along with their respective weapons on their respective vehicles. Thereafter, Hardev Singh and Raju were taken to hospital after arranging the vehicle, but the doctor after examining Hardev Singh declared him dead, whereas the relatives of Raju took him to Guru Ramdass Hospital, Mehta Road, Amritsar and got him admitted there. Raju has also succumbed to his injuries.

Counsel for the petitioner has argued that the petitioner was never named in the FIR which was registered at the instance of complainant, an eyewitness and it is in the supplementary statement made by the complainant, the petitioner has been named as an additional accused. Even in the supplementary statement, there is no allegation against the petitioner that he has ever given fire shot injuries to Hardev Singh or Raju, who have died in the incident. The explanation given by the complainant Kulwant

Singh in his supplementary statement that he being in trauma due to the death of his brother Hardev Singh has forgotten to mention the names of all the accused, is nothing but an afterthought, so as to implicate the petitioner in the case. She has further argued that even in the supplementary statement, there is no allegation against the petitioner that he caused any injury to the deceased in any manner except that the petitioner was present along with his other co-accused. The co-accused Dinesh Kumar @ Tinku has already been admitted on bail by this Court in ***CRM-M-19535-2019*** titled as ***Dinesh Kumar @ Tinku Versus State of Punjab***, vide order dated 21.08.2019. The eyewitnesses examined in the case, namely, Gurpreet Singh, PW-13 and PW-14 Mahesh Kamat have not supported the case of prosecution and were rather declared hostile. Moreover, on the date when the co-accused Dinesh Kumar @ Tinku was admitted on bail vide order dated 21.08.2019 passed by this Court, his custody was about 2 years and 10 months, whereas the petitioner is in custody since 11.08.2016. The complainant is not coming forward to get himself cross-examined despite numerous opportunities granted to him and now the court has to adopt the recourse of bailable warrants to the complainant. As against 38 witnesses cited by the prosecution, only 15 witnesses have been examined so far. Petitioner is in custody for about 4 ½ years.

Learned State counsel has filed the custody certificate, which is taken on record. He has not disputed the custody. However, he submits that it may be on account of lockdown in Covid-19 epidemic, the complainant is not able to appear in the case to depose for his cross-examination, but the petitioner was a member of unlawful assembly and two deaths have been

caused in the case. Therefore, considering the nature of the case, the petitioner is not entitled to be admitted on bail. Moreover, in case, he is released on bail, he may influence the witnesses, as two of the witnesses have already been declared hostile.

I have heard learned counsel for the parties.

Petitioner is in custody since 11.08.2016. The present FIR was registered at the behest of Kulwant Singh, who is none else but an eyewitness and the real brother of Hardev Singh, who died in the incident. The allegation of use of firearm is against the co-accused Subham. The other co-accused Dinesh Kumar @ Tinku has already been admitted on bail by this Court vide order dated 21.08.2019 passed in CRM-M-19535-2019 and at that time, he was in custody for about 2 years and 10 months. His name was otherwise find mention in the FIR. But in the case in hand, the name of the petitioner does not figure in the FIR. It is only in the supplementary statement, he has been named as an additional accused. Firearm injuries have not been attributed to him. Moreover, the custody of co-accused Dinesh Kumar @ Tinku, was about 2 years and 10 months when he was admitted on bail, whereas the petitioner is in custody for 4 years and 6 months. Even otherwise, the eyewitnesses PW13 and PW14 who have been examined in the case, have not supported the case of the prosecution and rather declared hostile. Further, as against 38 witnesses, only 15 witnesses have been examined. Interestingly, as on 21.08.2019, when the co-accused Dinesh Kumar @ Tinku was admitted on bail, 14 witnesses were examined, whereas after 21.08.2019, only one witness has been examined. The complainant is not coming forward to depose in the case and in this manner, the trial Court

was constrained to issueailable warrants for his appearance. Though the case was fixed before the trial Court for today, but even today the complainant has not been examined.

Considering the fact that the petitioner is in custody since 11.08.2016 and two of the witnesses, who were eyewitnesses i.e. PW13 Gurpreet Singh and PW14 Mahesh Kamat, have not supported the case of the prosecution and were declared hostile coupled with the fact that there is no allegation against the petitioner in the FIR and it is only in the supplementary statement, the presence of the petitioner has been mentioned, this Court deems it appropriate to admit the petitioner on bail.

Accordingly, the present petition is allowed and the petitioner is admitted on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of trial Court/Illaq Magistrate/Duty Magistrate.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial court shall decide the case on the basis of available material.

(HARI PAL VERMA)
JUDGE

04.12.2020
sanjeev

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