

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

207

CRM-M-1580-2021

Date of Decision : July 27, 2021

NISHAN SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Amandeep Singh Manaise, Advocate
for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

Through Video Conferencing

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No. 81 dated 27.8.2015 under Sections 399, 402, 212, 216, 34 IPC and Section 25 of the Arms Act, Police Station Maqboolpura, District Amritsar.

Learned counsel for the petitioner has submitted that it is a third successive bail application for the grant of regular bail to the petitioner. Earlier he had withdrawn bail applications vide Annexure P-3 and P-4 at that stage in view of the fact that the State had taken the stand that the petitioner was declared PO in other cases as well and therefore, he will not be considered for the grant regular bail. He has further submitted that even in the affidavit which has been filed in the present case it is stated that the petitioner is PO in other cases as well. But in the

custody certificate which has been filed today, it is shown that the petitioner is already in custody and therefore, the petitioner is not PO in any case including the present case as he has already been taken into custody in all cases in which earlier he was shown as PO and therefore, this constitutes a change of circumstance for the maintainability of the present successive bail application.

Learned State counsel has also not disputed that in the custody certificate it is shown that the petitioner is in custody and therefore, he is not PO in other cases.

On merits, the learned counsel for the petitioner has submitted that the petitioner was falsely implicated in the present case and as per the allegations contained in the FIR an information was received by the police that various persons including Rashpal Singh @ Tinda, Resham Singh, Bhupinder Singh @ Bhinda, Ravi Kumar @ Ravi, Nishan Singh @ Nishan (petitioner) and Mani @ Lenda have together formed a gang to commit snatchings in Amritsar City and outside and they were planning to commit snatching again and if raid is conducted then all the above said persons can be nabbed with various weapons and on the basis of this secret information the present FIR was lodged. Thereafter, raid was conducted by the police and accused Rashpal Singh, Bhupinder Singh, Resham Singh and Kirpal Singh @ Noor were arrested on the spot, whereas, as per the prosecution story the petitioner and one other co-accused namely Money @ Lenda and one Ravi Kumar @ Ravi fled away from the spot. He has submitted that the petitioner is in custody for about 2 years and 3 months as he was arrested on 25.4.2019 on the

basis of production warrants. He has submitted that the present FIR was lodged on 27.8.2015 but the petitioner was not even aware of it because there was no offence committed by him and thereafter the petitioner was declared as PO on 15.11.2016. Thereafter since the petitioner was arrested in some other cases he was brought on production warrants and was arrested in the present case on 25.4.2019. No recovery has been made from the petitioner and there is nothing on the record to show that the petitioner was connected in any way with the present offence, if any. He has further submitted that even as per the FIR the case of the prosecution was that the accused were planning to commit robbery but the act of robbery has not been mentioned anywhere nor it was a case of the prosecution. He has further submitted that the reason as to why the name of the petitioner finds a mention in the FIR is that since the petitioner was facing trial in some other cases the police planted the name of the petitioner in this case as well and that is why the petitioner was shown to have fled away from the spot and that is why no recovery has been effected from the petitioner. He has further submitted that so far as the pendency of the other cases against the petitioner is concerned, the same cannot become a ground for denial of bail in the present case because in the facts and circumstances of the present case there is nothing on record to show that the petitioner was in any way connected with the offence, if any. He has further submitted that in most of the cases the petitioner has been granted bail but in some cases the petitioner has filed application for bail but the same was under consideration. He has further submitted that even otherwise also the investigation of the case is already

complete and nothing is to be recovered from the petitioner and after completion of investigation, the challan has already been presented by the police on 21.6.2019 and the matter is now fixed for framing of charges. Learned counsel for the petitioner has further submitted that the other co-accused in the present case have already been granted bail. He has referred to Annexure P-2 whereby the learned Sessions Judge, Amritsar have granted bail to other similarly situated co-accused, namely, Mani @ Lenda. He has further submitted that the other co-accused who was caught on the spot and the recovery was made from them have already enlarged on bail. He has submitted that he has suffered incarceration for about 2 years and 3 months and the investigation of the case is already complete and the trial of the case may take long time and therefore, keeping in view the facts and circumstances of the present case, he may be considered for the grant of regular bail.

On the other hand, Mr. Thind, learned DAG, Punjab has submitted that it is correct that the petitioner is in custody since 25.4.2019 which is about 2 years and 3 months and that the investigation of the case is already complete and the challan has already been presented. He has further submitted that it is also correct that no recovery has been made from the petitioner and the only allegation against the petitioner was that he was a part of the conspiracy which was to commit theft and he fled away from the spot when the police party reached the place on the basis of secret information. However, learned State counsel has opposed the grant of regular bail to the petitioner on the ground that there are about 11 cases pending against the petitioner of which most of

them pertaining to the offence of theft. He has submitted that since the petitioner is a habitual offender there is every likelihood that he may abscond or may tamper with the prosecution evidence.

I have heard the learned counsel for the parties.

The custody period of the petitioner is not disputed and it is also not disputed that the investigation of the case is already complete and the challan has already been presented. It is also not in dispute that in the present case no recovery has been effected from the petitioner. So far as the pendency of other cases is concerned, as of today the petitioner is not a proclaimed offender but he is in custody in those cases and in most of the cases he has been granted bail by the respective Courts. So far as the present case is concerned, the allegations against the petitioner are that he was present at the spot where the police party conducted raid but he fled away from the spot and the petitioner alongwith other persons were making conspiracy to commit a theft. No recovery has been effected from the petitioner and as per the arguments raised by the learned counsels for the parties at this stage nothing can be said with regard to the connectivity of the petitioner with the alleged crime. The other co-accused in the present case have already been enlarged on bail. The custody of the petitioner which is about 2 years and 3 months would also be relevant circumstance to be taken into consideration in the present case.

Therefore, considering the totality of the circumstances of the present case, I deem it fit and proper to allow the present petition.

Consequently, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/Duty Magistrate.

July 27, 2021
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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No