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

**CRM-M-9575-2021
Date of Decision: 25.11.2021

Jasmeet Singh @ Lucky @ Jasbir

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

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

Mr. B.S. Sewak, Addl. A.G., Punjab,
for the respondent/State.

Mr. Umaid Singh Mann, Advocate,
for the complainant.

SUDIP AHLUWALIA, J. (ORAL)

This is a petition for regular bail filed on behalf of the petitioner under Section 439 Cr.P.C. in case FIR No.129 dated 18.08.2020, under Sections 307, 506, 34, 120-B, 148, 149 & 201 of the IPC and Section 25 of the Arms Act, 1959, registered at Police Station Bullowal, District Hoshiarpur.

[2]. Fresh Affidavit sworn by the Deputy Superintendent of Police, PBI/NDPS-cum-Incharge, Sub Division Rural, Hoshiarpur filed on behalf of the respondent/State in compliance of the order passed yesterday along with its Annexures R/1 & R/2.

[3]. Custody Certificate of the petitioner, which was tendered on behalf of the State yesterday, goes to show that the petitioner has remained

in detention in the present case for 1 year and 12 days, since 12.11.2020.

[4]. The petitioner was not named in the original FIR lodged by the complainant Avtar Singh in which it was alleged that his brother Lovedeep Singh had been shot at by some five persons, who were sitting in one I-20 Car at about 9.15 PM on 17.08.2020 when he was travelling in his Baleno Car Regd. No.PB-07-BQ-6060 along with his friend Jaskaran Singh while the complainant along with his friend Amrik Singh was following them in Car Regd. No.PB-07-AW-0472. Consequently, the complainant's brother as well as his friend Jaskaran Singh got injured. It was further mentioned in the FIR that the attack had been conducted on the asking of one Ravi Balachauria by Ganesh resident of Adda Saran and Gogi son of Mohan Singh in connivance with three other companions.

[5]. Submission of Ld. Counsel for the petitioner in this regard is that his client has been falsely implicated although he was never involved in the alleged occurrence and the alleged recovery of fire-arm/pistol from his is also a planted one.

[6]. After completion of investigation, Challan against the petitioner and certain other co-accused persons has already been submitted. It may be mentioned that earlier on 01.11.2021, this Court had directed the State to place on record the FSL Report(s) and other documents forming part of the Challan papers. Thereafter, yesterday a vague and ambiguous Affidavit sworn by the Senior Superintendent of Police, Hoshiarpur was filed and this Court on going through the same put the following observations on record:-

*“Perusal of the same prima facie goes to show
that its contents are vague and ambiguous. For*

instance, in Para No.6 of the said Affidavit, it is mentioned that a .32 bore pistol was recovered from the Petitioner, but there is no mention as to what was the Exhibit number assigned to the same for the purpose of its Forensic analysis, although there is reference to as many as seven countrymade pistols in item (i) of the Para. It therefore cannot be inferred as to which was/were the pistol(s) recovered from the Petitioner, which is a sine qua non for determining further whether the bullets/pellets/cartridge shells recovered, matched the said pistol(s). It may be further mentioned that on 1st November, 2021 the direction of this Court was to place not only the relevant FSL Report, but all other documents relied upon by the State to support the Final Report submitted against the Petitioner, as can be seen from the following extracts from the previous order :-

'In the interest of justice, an opportunity is granted to the State Counsel to place not only the relevant FSL report, but all other documents on which they seek to rely upon in support of the final report submitted against the petitioner, which are supposed to be part of the challan papers'."

[7]. Thereafter, today a fresh Affidavit as already mentioned above, sworn by the Deputy Superintendent of Police, Hoshiarpur has been filed along with copies of the FSL Report (Annexures R-1 & R-2). Perusal of Annexure R/2 which purportedly pertains to the Forensic/Ballistic Examination of the fire-arms/pistols as well as ammunition/cartridges recovered from the various accused persons, shows that no link could be established by the Experts regarding the 'KF' cartridges and the pistol allegedly recovered from the petitioner which was contained in parcel 'f' as

referred to in the Report. The relevant extracts in the said report are reproduced as below:-

- “1. Country made pistols marked W/1, W/2, W/3, W/4, W/5, W/6 and W/7 respectively contained in parcels 'B', 'C', 'D', 'E', 'F', 'G' and 'H' under reference are in working condition.*
- 2. Two 7.65 mm 'KF' cartridge cases marked C/2 and C/3 contained in parcel 'A' had not been fired through any of the country made pistols marked W/1, W/2, W/3, W/4, W/5, W/6 and W/7 respectively contained in parcels 'B', 'C', 'D', 'E', 'F', 'G' and 'H' under reference.*
- 3. In the absence of percussion cap and lack of individual characteristics marks, no opinion could be offered with respect to one 7.65 mm 'KF' cartridge case marked C/1 contained in parcel 'A' as to whether it had been fired or not through any of the country made pistols marked W/1, W/2, W/3, W/4, W/5, W/6 and W/7 respectively contained in parcels 'B', 'C', 'D', 'E', 'F', 'G' and 'H' under reference.”*

[8]. In opposing the bail petition, Ld. Counsel for the complainant has submitted that since the pistol recovered from the petitioner was in consequence of the confessional statement given by Ravi Balachauria, so it cannot be said that there is no material to link the petitioner with the occurrence. In support of this contention he has relied upon an old decision of the Full Bench of this Court passed in “**Ram Richhpal Vs. The State**”, **1954 PLR 23** on 16.11.1953, wherein it was observed *inter alia*:-

“Under Section 27 a confession made by an accused person to the police is admissible notwithstanding the fact that the person may be in police custody, and it is clear therefore that section 27 deals with an exceptional case and the exceptional case

arises when the confession contains information which leads to the discovery of a relevant fact.

(Emphasis added)

[9]. The above submission raised on behalf of the complainant, however, would not appear to be convincing. This is so because in his confessional statement the co-accused Ravi Balachauria had mentioned about the fire-arms allegedly used in the occurrence by stating:-

“There on the backside of the driver seat of the I-20 car Parminder Singh @ Happy @ Vapari above mentioned kept pistol 32 bore under the mat which he used in the attack on 17.08.2020 and on the backside of passenger seat Sunil Kumar @ Monu Gujar above mentioned kept the pistol 32 bore which he used in the attack conducted on 17.8.2020 in village Sikri. I know about both these pistols and I-20 car, I can get it recovered after getting the demarcation done. And, the pistol which was used by Jasmeet Singh @ Lucky above mentioned, he took it along with him. That only he knows about that pistol.”

(Emphasis added)

[10]. It is, therefore, clear that the co-accused Ravi Balachauria had only stated that the pistol allegedly used by the present petitioner was taken away by the petitioner himself and only the petitioner knows about the same. Consequently, by no stretch of imagination, it can be said that recovery of the pistol was on the basis of any confessional statement made directly by any of the accused persons. Such a situation does not meet up to the requirements to constitute any admissible evidence under Section 27 of the Evidence Act, especially in view of the following observations in the Full Bench's decision relied upon by the petitioner himself, made elsewhere

in the same judgment, which are as follows:-

“In this case although the discovery was made in consequence of information supplied by the accused person, the discovery cannot be said to be a direct and immediate result of the information, for the police had to question two other persons and the casual relationship between information and discovery consists of a chain containing several links, whereas section 27 contemplates a chain of one link only.”

(Emphasis added)

[11]. At any rate, even if the pistol had been got recovered at the instance of the petitioner himself (which actually is not so), still it would be difficult to hold that it had any connection with the occurrence that took place, since the Forensic/Ballistic Report does not link it to the cartridges/empty shells examined by the Expert.

[12]. In such circumstances, considering that the petitioner was neither named in the FIR, nor there is any tangible material to link him to the alleged occurrence except the confessional statement of a co-accused which is *per se* inadmissible, and the Forensic/Ballistic Report also does not corroborate that the pistol allegedly recovered from him was used in the occurrence, he would at this stage be entitled to be released on bail, especially considering that he has already undergone detention in the present case for more than one year and the trial is yet to start. As such, his further detention for an indefinite period is not called for.

[13]. For the aforesaid reasons, without commenting any further on the merits of the present case as a whole, but in view of the long detention undergone by the petitioner, his prayer for regular bail is allowed and he is ordered to be released on regular bail subject to appropriate terms and

conditions to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

[14]. Disposed off.

25.11.2021

Bhumika

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes/No

2. Whether reportable: Yes/No