

In virtual Court

CRM-M-14321-2020

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-14321-2020 (O&M)
Date of decision: 25.01.2021

Sandeep Kumar

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

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

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.180 dated 29.06.2010 under Sections 307, 353, 332, 186, 411, 412, 148, 149, 467, 468, 120-B IPC and Section 25/54/59 of Arms Act, registered at Police Station Samrala, District Ludhiana.

Learned counsel for the petitioner submits that as per allegations in the FIR, a secret information was received that the petitioner and other accused are coming in a black coloured vehicle, which is snatched by them from Amritsar and they are also carrying illegal weapons. On receiving the information, when the car was stopped near the bus stand, it was surrounded by

the police party. Thereafter, the persons sitting on the driver seat and co-driver seat started firing towards the police party, in which one of the police official was got injured. The police party captured three persons and two persons ran away. The petitioner, who was sitting on the rear seat of the car, was apprehended. It is further submitted that the petitioner was granted the concession of regular bail, however, later on, he was declared a proclaimed offender, as he was arrested in another FIR No.111 dated 26.07.2014 under Sections 399/402 IPC and Section 25/54/59 of Arms Act, Police Station Dehlon, Ludhiana.

Learned counsel for the petitioner further submits that after arrest of the petitioner in the aforesaid FIR No.111, his appearance was not shown in the present FIR and on that account, he remained absented in this case. It is also submitted that as on today, the petitioner is in custody for the last 03 years and 03 months and despite the fact that challan has been presented on 29.11.2020, till date, charges have not been framed and the trial is going on. It is further submitted that though the petitioner was initially arrested on 29.06.2010 in the present FIR and was granted default bail under Section 167 (2) Cr.P.C., however, he could not furnish the bail/surety bonds and was produced before the trial Court till September, 2013 and from 17.03.2014 onwards, he was not produced on account of security reasons, therefore, he was wrongly declared as proclaimed offender and for some time, the trial also remained closed as per the order dated 09.08.2017.

On 05.08.2020, following order was passed by this Court: -

“On 08.07.2020, considering the embarrassing situation for the

police as well as the Courts, the following order was passed:-

“The petitioner Sandeep Kumar who is stated to be aged 30 years has filed the present petition inter alia with a prayer for grant of regular bail. He has been allegedly involved in case FIR No.180 dated 29.06.2010 under Sections 307/353/332/186/411/412/148/149/467/468/120-B IPC and Sections 25/54/59 of the Arms Act, 1959 registered at PS Samrala, District Ludhiana.

Learned counsel submits that the petitioner is involved in a peculiar circumstances. Counsel submits that the petitioner was arrested on 29.06.2010. The petitioner was initially granted bail but he still continued to be in jail because he could not furnish the bail bonds/surety. Counsel then submits that the petitioner was regularly produced before the trial Court by the jail authorities upto September, 2013. However, on 17.10.2013, the petitioner was not produced by the jail authorities allegedly because of security reasons. Based on this, counsel therefore submits that in the above circumstances, the order declaring him PO deserves to be recalled/quashed. Counsel then submits that in the meantime, the trial in the case was closed on 09.08.2017. Counsel states that he has recently learnt that the trial has started again. On a question put by the Court, counsel submits that some of the petitioner’s inmates in jail

who have now been released from jail on one account or the other have started helping him and as such he has been able to file the present bail application.

Upon notice, Mr. Dhruv Dyal, Sr.DAG, Punjab accepts notice through video conferencing.

Learned State counsel on instructions from SI Gurpratap Singh submits that on 16.09.2019 supplementary challan has been presented and there are 5 more PWs who need to be examined.

Having heard learned counsel for the parties, this Court deems it appropriate to direct the State to file specific affidavit indicating the list of dates and the actual period of custody of the petitioner. Let the affidavit be filed within 2 weeks from today.

Post on 05.08.2020.”

A short affidavit dated 30.07.2020 has been filed by Sh. Jaswinder Singh Chahal, PPS, DSP Samrala which does not at all clarify the issue.

The issue as setout in the earlier order is that the petitioner was arrested on 29.06.2010. Counsel for the petitioner submits that the petitioner was initially granted bail but he still continued to be in jail because he could not furnish bail/surety bonds.

The affidavit dated 30.07.2020 only points out that the petitioner was in custody from 25.07.2010 till 05.04.2012 and

again from 03.05.2019 to 16.07.2020.

On the asking of the Court as to if on 16.07.2020, the petitioner was released on bail or otherwise, learned State counsel informs that the affidavit appears to have been taking into account the custody certificate dated 20.07.2020 which mentions the custody upto 16.07.2020. He, however, submits that the petitioner is still in custody/jail.

In view of the peculiar circumstances, this Court is constrained to direct the Director General of Police, Punjab to personally look into the matter. In spite an opportunity given by this Court on 08.07.2020, the following points still remains to be clarified apart from other sequence of events which were expected to be given by the State/police authorities (i.e. w.e.f. date of arrest till date):-

(i) as to if the petitioner was ever released on bail since his date of initial arrest i.e. 29.06.2010 or 25.07.2010?

(ii) in what circumstances, and under whose orders, petitioner's production before the trial Court, in the present FIR, was stopped/discontinued?

(iii) if the petitioner was all-through, as per the records, arrested and continued to be in jail w.e.f. 25.07.2010 till date, then why was he not produced before the Court in the present FIR and why was the Court not informed that there is no need to declare him PO in the present FIR?

In addition to the above, the Registrar General of this Court is directed to instruct the CJM, Ludhiana to file a status report and the same be placed before this Court on administrative side.

Considering the urgency in the matter as learned counsel for the petitioner submits that the maximum punishment inter alia, in all other sections mentioned in the FIR, except Section 307, would be 5 years and the fact that petitioner has already undergone, since 2010, much more than that (even in any case as per the custody certificate now given by the State the petitioner has undergone almost 3 years), the Director General of Police, Punjab is directed to ensure that some Nodal Officer examines the whole issue and file an affidavit within one week from the date of receipt of certified copy of this order.

List on 17.08.2020.

Let a copy of the present order be given to learned State counsel for information and necessary compliance by the concerned authority(ies). Let a copy of the order be also sent by email by the Registrar General of this Court....”

In pursuance of the aforesaid order, affidavit of Inspector General of Police, Ludhiana Range, Ludhiana is on record and even report of the Chief Judicial Magistrate, Ludhiana dated 12.08.2020 is on record. As per report of the Chief Judicial Magistrate, at Point No.1, it is stated that on 05.04.2012, the accused was ordered to be immediately released from the custody in terms of the bail order dated 16.09.2011 and his release warrants were also issued. In

Point No.2, regarding discontinuance/stoppage of production before the trial Court, it is stated that since the petitioner was undergoing sentence of 07 years in FIR No.39 dated 09.04.2007 under Sections 382, 458, 459, 397 IPC, Police Station Shahkot, Jalandhar, the petitioner was released on parole in the said FIR, but he jumped the parole and did not surrender back. At Point No.3, it is stated that as per report of Superintendent, Central Jail, Ludhiana, non-bailable warrants were issued against the petitioner on 07.03.2014 and he was declared proclaimed offender on 21.08.2014 and thereafter, the case was committed to the Court of Sessions against another accused namely Manjit Singh, however, the petitioner was later on admitted in the jail in aforesaid FIR No.39. Since there was no order of the Court for taking the accused in custody in the present FIR, in the intervening period, he was not produced before the trial Court, however, later on, he was produced before the Court.

It is further stated that Superintendent, Central Jail, Ludhiana has mentioned in his report that on 17.07.2015, the accused was declared not required in the case and therefore, he was not produced before the Court unless the production warrants were received. It is also stated that as per report of Superintendent, Central Jail, Ludhiana, the petitioner remained in custody from 25.07.2010 to 05.04.2012 and thereafter, from 19.04.2019 to till date and on account of the report that he is not required in this case, the petitioner was not produced before the Court from 05.03.2015 to 17.07.2015. This report is also supported with report of Superintendent, Central Jail, Ludhiana.

Learned State counsel, on the basis of affidavit of IGP, Ludhiana Range, Ludhiana, has submitted to the same effect that on account of aforesaid

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facts, for some time, presence of the petitioner could not be recorded before the trial Court.

After hearing learned counsel for the parties, without commenting anything on merits of the case and going through the report submitted by the Chief Judicial Magistrate, Ludhiana, Superintendent, Central Jail, Ludhiana as well as affidavit of IGP, Ludhiana Range, Ludhiana and also in view of the fact that the petitioner is in long custody of about 03 years and 03 months and charges are yet to be framed, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

25.01.2021
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No