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

**CRM-M No.19747 of 2021
Date of Decision:25.05.2021**

KULWINDER SINGH @ KINDER

.....Petitioner

Vs

STATE OF PUNJAB

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Bipan Ghai, Sr. Advocate with
Mr. Paras Talwar, Advocate
for the petitioner.

Mr. Amar Ashok Pathak, Addl. A.G, Punjab.

Mr. Navneet Singh, Advocate
for the complainant.

RAJ MOHAN SINGH, J.(Oral)

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

Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.157 dated 09.11.2020, registered under Sections 302, 307,325, 324, 323, 34 IPC and Sections 27, 54, 59 of the Arms Act at Police Station Dhanaula, District Barnala.

The FIR was registered at the instance of complainant Gurkirtan Singh with the allegations that about 14 years ago,

there was an exchange of land with Labh Singh and Bharbhur Singh of village Kaleka. According to the said exchange, the complainant along with his parental uncle Jasmel Singh had to be shifted to Niyai Wala Fields and the land situated in Sue Wala was given to Labh Singh and Bharbhur Singh. Labh Singh had some excess land of 1 kanal 9 marlas in Niyai Wala Field and a sale deed was executed in respect of said area in the name of Jasmel Singh. Both the parties took possession of the respective land as per exchange and sale deed. Thereafter, Labh Singh and Bharbhur Singh demanded land from Niyai Wala Fields and on 08.11.2020, Labh Singh and his son kulwinder Singh alias Kinder Bharbhur Singh and his sons Pardeep Singh and Mandeep Singh came to the field with an intention to fight with the complainant and started making edges forcibly. Complainant avoided the situation and went home and made a complaint to the Police. On 09.11.2020 at about 8:00 AM, when the complainant along with his brother Kulwinder Singh came to Niyai Wala Field to have a round in order to ascertain any mischief committed by the accused party, then Bharbhur Singh alias Bhura armed with Dang, Labh Singh armed with Dang, Pardeep Singh armed with 12 bore double-barrel gun, Mandeep Singh (petitioner) armed with Kassia and Kulwinder Singh alias Kinder armed with gandas came there while raising lalkara. Bharbhur Singh alias Bhura raised lalkara.

Thereafter, Pardeep Singh fired from his 12 bore double barrel gun towards the complainant and the complainant saved himself by sitting down. Pardeep Singh fired another shot towards Kulwinder Singh hitting on his right flank. Kulwinder Singh fell down due to gun shot injuries. Complainant raised alarm. At that time, Jasmel Singh came to the spot by raising alarm. In the meantime, Pardeep Singh again fired third shot from his double barrel gun towards Jasmel Singh hitting him on his face on the right eye. Jasmel Singh fell down and then Labh Singh raised lalkara that Gurkirtan Singh/complainant be not spared. Thereafter, petitioner Kinder gave a gandasi blow on the head of the complainant, which was warded off by the complainant and blow ultimately landed on the elbow of his right arm. Petitioner/Mandeep Singh gave a kassia blow towards the head of the complainant which was also warded off and the blow ultimately landed on the thumb of the right hand of the complainant.

Learned counsel for the petitioner submits that petitioner has not inflicted any injury to the deceased Kulwinder Singh. Gun shot injuries have been attributed to Pardeep Singh. The petitioner has inflicted injury to the complainant which is sharp edged injury but the same has not been declared as grievous. Petitioner is in custody since 12.11.2020.

As per MLR of the complainant, three injuries were found on his person. Injury No. 2 is on the right thumb. Injury No.3 is found to be fracture of distal phalanx of right thumb. The Injury attributed to the petitioner does not have any bonny injury and therefore, the same is simple in nature. The allegation is that the petitioner being member of unlawful assembly can be roped in with the aid of Section 34 IPC. Learned counsel further submits that the case of the petitioner is at par with that of Mandeep Singh who has been granted regular bail by this Court vide order dated 28.04.2021 passed in CRM-M No.17121 of 2021.

Learned State counsel duly assisted by learned counsel for the complainant on the other hand submits that the petitioner being member of unlawful assembly has actively participated in the occurrence and the role of the petitioner is severe in nature and is liable under Section 34 IPC. Challan has been presented. Charges have been framed but no prosecution witness has been examined so far.

Taking into consideration the aforesaid facts and circumstances of the case, I find that the petitioner has not inflicted any injury to the deceased. Petitioner has inflicted the injury on the person of complainant which is not found to be grievous in nature. The allegation with regard to the petitioner being member of unlawful assembly would be tested by the trial

Court at the relevant stage, on the basis of evidence to be led by the parties.

At this stage, without meaning anything on the merits of the case and in view of situation arising out of COVID-19 pandemic, I deem it appropriate to enlarge the petitioner on regular bail subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

May 25, 2021

Amandeep

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No