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

322**CRM-M-19292 of 2020**

Date of decision : 21.12.2021

Amritpal Singh @ Amrit

... Petitioner

Versus

State of Punjab

.. Respondent

CORAM :HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Manbir Singh Basra, Advocate and
Mr. Anupinder Singh Brar, Advocate for the petitioner.

Mrs. Amarjit Kaur Khurana, DAG, Punjab.

Anupinder Singh Grewal, J. (Oral)

The petitioner is seeking regular bail in FIR No.46 dated 31.05.2018 under Sections 307, 438, 427, 148, 149 IPC [Sections 121, 121-A, 122, 124-A, 115 IPC, Sections 11, 12, 13, 16(1)(b), 17, 18 of the Unlawful Activities (Prevention) Act, 1967 (for short, 'the UAPA'), Sections 25/54/59 of the Indian Arms Act and Sections 66(a) and 66(f) of the Information Technology Act, 2000 added later on], registered at Police Station Rangar Nangal, District Gurdaspur.

Learned counsel for the petitioner contends that the petitioner is not named in the FIR wherein it is alleged that a wine shop had been set on fire. The petitioner has been arraigned as an accused on the statement of co-accused Dharminder Singh @ Fauji. The petitioner is alleged to have conducted 'recce' of a local Shiv Sena leader and had passed on his whereabouts to co-accused and other anti-national elements. There is no allegation that any attempt was made to actually harm anyone. Neither any attempt has been made on the life of the leader nor any harm has been caused to him. Co-accused Harnam Singh and

Nirmal Singh have been granted bail by the Additional Sessions Judge, Gurdaspur on 20.07.2018. Prior to the involvement of the petitioner in the instant FIR, he was not involved in any other case. The trial in the instant case has come to a standstill as a Coordinate Bench of this Court in CRR No.1798 of 2019 preferred by co-accused Dharminder Singh @ Fauji against framing of charges, has stayed further proceedings and there is no likelihood that the trial will be concluded soon. He also contends that the petitioner would be entitled to the concession of regular bail in view of Article 21 of the Constitution of India which guarantees right to speedy trial. He has cited the judgement of the Supreme Court in the case of **Union of India versus K.A. Najeed, 2021(3) SCC 713** wherein the Supreme Court had directed the release of the petitioner merely on account of long custody even though the allegations were serious. He also contends that in the FSL report with regard to the voice sample of the petitioner, it is mentioned that it is a probable voice match of the petitioner. The petitioner is a 24 year old and is in custody for over three years and six months. He is not involved in any other criminal case.

Learned State counsel, upon instructions from DSP Jitender Pal Singh, contends that the petitioner had actively indulged in unlawful activities and in the statements of co-accused Dharminder Singh @ Fauji and Kirpal Singh, they had stated about the involvement of the petitioner in unlawful activities and the petitioner had also conducted *recce* of a local Shiv Sena leader and has passed on information of his whereabouts to co-accused. She also contends that the voice samples of the petitioner and co-accused Dharminder Singh @ Fauji have been sent for FSL and it was found that it is the voice of the petitioner. The recovery of a mobile phone has been effected from the petitioner. In view of the serious allegations against the petitioner, he

is not entitled to the concession of regular bail. In support of her submissions, she has relied upon the judgement of the Supreme Court in the case of **National Investigation Agency versus Zahoor Ahmad Shah Watali, 2019 AIR (SC)1734** and contends that only where a *prima facie* case under the UAPA is not made out, the Court can grant regular bail.

Heard.

The allegations against the petitioner are that there is a whatsapp conversation between the petitioner and co-accused wherein the petitioner is conducting recce and passing on the whereabouts of a local Shiv Sena leader. Neither any attempt has been made on the life of the leader nor any harm has been caused to him. There is no allegation that any overt act to incite violence or cause harm to any individual has been done by the petitioner. The authenticity of the whatsapp conversation and its evidentiary value would be determined at the trial. The petitioner is a 24 year old and is in custody for over three years and six months. He is not involved in any other criminal case. The conclusion of the trial is likely to take sometime.

In the case of **Union of India versus K.A. Najeer (supra)**, the Supreme Court has held that long custody would be an essential factor while granting bail under the UAPA. Article 21 of the Constitution of India provides right to speedy trial and long period of incarceration would be a good ground to grant bail to an under-trial for an offence punishable under the UAPA. It has also been held that the embargo under Section 43-D of the UAPA would not negate the powers of the Court to give effect to Article 21 of the Constitution of India. The relevant extract of the judgement is reproduced hereunder:-

*“It is thus clear to us that the presence of statutory restrictions like **Section 43D (5) of UAPA** per se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part*

III of the Constitution. Whereas at commencement of proceedings, the Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like [Section 43D \(5\)](#) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

xxxxxxxxxxxx

Instead, [Section 43D \(5\)](#) of UAPA merely provides another possible ground for the competent Court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion etc.”

In view of the above, the petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing requisite bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

At the time of release of the petitioner, the SHO, Police Station City Tarn Taran shall be informed. The petitioner shall furnish his mobile number to the SHO concerned and shall also keep the location of his phone on till the conclusion of the trial. He shall appear before the SHO concerned on every alternate Monday till the conclusion of the trial.

However, it is clarified that the observations made hereinabove would not have any bearing on the merits of the case.

(ANUPINDER SINGH GREWAL)
JUDGE

December 21, 2021
sonia gugnani

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