

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

212

CRM-M-20001-2020 (O&M)

Date of Decision: 15.11.2021

Rajesh Malik

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

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

Mr. Ajay Pal Singh Gill, DAG, Punjab,
assisted by ASI Balbir Singh.

Mr. A.S.Manaise, Advocate, for the complainant.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered against him vide FIR No.102 dated 27.06.2020 at Police Station Kharar, District SAS Nagar (Mohali) under Section 307 IPC and Section 27 of the Arms Act.
2. When the matter was taken up for preliminary hearing on 08.09.2020, a Coordinate Bench ordered for release of the petitioner on interim bail by passing a detailed order. The said order reads as follows:

“[1]. The case was taken up for hearing through video conferencing.

[2]. Petitioner seeks grant of regular bail in case bearing FIR No.102 dated 27.06.2020 registered under Section 307 IPC and

Section 27 of the Arms Act at Police Station Kharar, Distt. SAS Nagar (Mohali).

[3]. Perusal of the FIR would show that the FIR in question was registered on 27.06.2020 at 10.17 p.m., on the basis of information furnished to the Police that somebody has fired in Jalvayu Apartments in Sunny Enclave. The occurrence is stated to have taken place between 8.00 p.m. to 8.30 p.m. SI Gurnam Singh along with other officials reached near KFC, Sunny Enclave, Kharar, where a special informer gave information that Narender Verma was sitting outside his house and public was walking around. The petitioner fired at Narender Verma with his licensed revolver and the shot hit at the chest of Narender Verma. On the basis of aforesaid information (which disclosed commission of offences under Section 307 IPC and 27-54-59 of the Arms Act) *ruqa* was sent at 8.30 p.m.

[4]. The complainant was brought to the Max Super Speciality Hospital, Mohali by his brother Surinder Verma on 27.06.2020 at 19.18 p.m. i.e. the time shown in the MLR. He was examined in the emergency at 19.20 p.m. A lacerated injury 2 cms approx. antero lateral chest wall at the level 6th inter costal space was found. Discharge summary dated 30.06.2020 of the injured would show the following injuries:-

- (i) *THE INJURED WAS DISCHARGED ON 30.06.2020 AT 11.00 AM WITH NO HISTORY OF LOC (LOSS OF CONSCIOUSNESS);*
- (ii) *PAIN AND MILD TENDERNESS PRESENT OVER RHQ AND EPIGASTRIC REGION ENTRY WOND 2 CM PRESENT OVER RHQ CONTUSION PRESENT OVER RHQ; and*
- (iii) *NO HISTORY OF CYANOSIS/RESPIRATORY DISTRESS/DECREASED CHEST MOVEMENT/ COUGH/BREATHLESSNESS/VOMITING.*

[5]. Learned Senior counsel appearing on behalf of the petitioner submitted the following facts:-

- (i) That the Police has not investigated properly. Incriminating material has been ignored for the reasons best known to the Police.

(ii) The complainant-party has a motive to implicate the petitioner in the present case, owing to election rivalry in the Society. Petitioner has already deposed against the complainant Narendra Verma before the Inquiry Officer (Sh. R.C. Bansal, District & Sessions Judge (Retd.), Panchkula on 08.06.2020.

(iii). Petitioner has taken twin pleas in the grounds that he was waylaid by the complainant and his companions and caused serious injuries on his person including fractures of ribs and left shoulder. His licensed revolver was also snatched and in that process, the fire shot went off hitting the complainant. Petitioner acted in his right of self-defence.

(iv) The Police has not lodged any cross-version which otherwise was apparent in view of serious injuries on the person of the petitioner.

(v) Petitioner was arrested on 27.06.2020 with injuries on his person. Medical examination of the petitioner was got conducted from the Civil Hospital, Kharar at 10.58 p.m. Seven injuries were found on the person of the petitioner. Injuries No.2, 3 and 5 were subjected to X-Ray and other injuries were declared to be simple. Allegation of the petitioner is that the Police managed the X-Ray report, thereby finding only injury No.3 to be grievous and got the police remand till 30.06.2020.

(vi) The petitioner kept on complaining about severe pain, but he was not medically treated except oral medication provided by Doctor at Borstal (Special) Jail, Ludhiana. As per diagnosis, petitioner was allegedly found a known case of hypertension with old CVA and pain left foot with LBA. Oral treatment was provided to the petitioner from 30.06.2020 to 03.07.2020.

(vii) Petitioner continued to inform the Police about his severe pain, but he was remanded to judicial custody on 30.06.2020. When the condition of the petitioner deteriorated on 03.07.2020, he was referred to Civil Hospital, Ludhiana. In Civil Hospital, Ludhiana multiple injuries were found on the person of petitioner. An urgent

2D Echo was advised on 04.07.2020, but he was further referred to DMCH, Ludhiana due to complications.

(viii) On 07.07.2020, ultrasound of whole abdomen of the petitioner was conducted. Mild-Moderate amount of pleural effusion was seen on left side of the chest.

Petitioner was diagnosed to the following effect:-

- (a) HYPERTENSION
- (b) OLD CVA (LEFT HEMIPARESIS ? HEMORRHAGIC)
- (c) CAD-OLD ANTERIOR WALL MI -MILD LV DYSFUNCTION, LVEF = 45% -MILD PLEURAL EFFUSION
- (d) ALLEGED H/O ASSAULT WITH MULTIPLE INJURIES
- (e) RIB FRACTURE AND LABIAL TEAR WITH FRACTURE OF LEFT SHOULDER

(ix) Spiral MDCT Chest was done vide which fractures of 7th, 8th and 11th ribs on left side were found with mild pleural effusion. Fracture of glenoid left shoulder region with reverse hill sack lesion was also found. Petitioner was advised for four weeks rest with effect from 09.07.2020.

(x) Petitioner had a history of right thalamic 'ICH' for which CT head/Brain was done in the year 2017. Right thalamic bleed with surrounding hypodensity of vasogenic edema and mild mass effect was found.

[6]. At last learned Senior counsel submitted that the FIR in question has been registered on the basis of information given by a special informer just to cover up the delay and to facilitate the complainant party to introduce concocted version at a later stage. The complainant remained conscious throughout on 27.06.2020. Police party visited the Hospital on 27.06.2020 and 28.06.2020, but the complainant stated that he was not well at that time and would get his statement recorded in a day or two. Brother of the complainant namely Surendra Verma remained present with him (as admitted by learned State counsel), but his statement was not recorded on 27.06.2020, nor on 28.06.2020. The statements of the injured and Surender Verma were recorded only on

29.06.2020. According to statement of the complainant, the petitioner fired four gun shots at the complainant. One shot hit in the chest of the complainant.

[7]. On 10.08.2020, following order was passed by this Court:-

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

Learned Senior Counsel for the petitioner contends that the petitioner was hospitalized in The Punjab Health System Corporation, Civil Hospital, Ludhiana on 27.06.2020 on account of serious injuries on his person.

Learned State counsel seeks time to place on record the details of treatment given to the petitioner from 27.06.2020 onwards till his discharge from the hospital. The statement of the injured (if any) recorded by the police be also placed on record by the adjourned date.

Adjourned to 25.08.2020.”

[8]. Petitioner was discharged from the hospital on 17.07.2020. The needful was not done by learned State counsel on the adjourned date i.e. 25.08.2020. Thereafter on 27.08.2020, last opportunity was granted to learned State counsel to do the needful in the context of orders dated 10.08.2020 and 25.08.2020.

[9]. In purported compliance of the aforesaid order dated 10.08.2020, an affidavit of Jatinderpal Singh, PPS, Deputy Superintendent of Police, Sub Division, Kharar-I, District SAS Nagar has been filed. The same is taken on record.

[10]. Perusal of the aforesaid status report would show that the same is conspicuously silent about the injuries found on the person of petitioner by the DMCH, Ludhiana with reference to Ultrasound and CT Scan reports. In view of order dated 10.08.2020, respondent State was required to place on record details of treatment given to the petitioner from 27.06.2020 onwards till his discharge from the Hospital, however the same has not been done. This is the state of affairs even after granting last opportunity to the respondent State vide order dated

27.08.2020. Learned State counsel contended that the investigation is still pending.

[11]. The complainant was discharged from the Hospital on 09.07.2020. This fact has been disputed by learned counsel for the complainant on the ground that the complainant was readmitted in the Hospital for removal of shotgun pellets thereafter.

[12]. From the material on record, it appears that the Police has not disclosed medical status of the petitioner after 03.07.2020 despite order passed by this Court on 10.08.2020. It is the petitioner, who has attached the documents depicting injuries on his person.

[13]. At this stage, without forming any opinion on the merits of the case and in view of medical status of the petitioner, it would be just and appropriate to release the petitioner on interim bail till the next date of hearing.

[14]. In view of above, petitioner is ordered to be released on interim bail till the next date of hearing, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

[15]. For further consideration, adjourned to 29.10.2020.”

3. Learned counsel for the petitioner has submitted that it is in fact a case of cross-versions, wherein the petitioner had also sustained as many as 7 injuries including 3 fractures on his ribs and that the petitioner otherwise is an ex-Air Force Officer and is not a previous convict. It has also been submitted that the challan already stands presented and that the petitioner ever since 08.09.2020 has not misused the concession of interim bail.
4. Opposing the petition, learned State counsel assisted by learned counsel for the complainant has submitted that although the petitioner was arrested on the day the FIR was lodged and was also medically examined and 7 injuries were recorded in the MLR, but

no fracture was ever detected. It has further been submitted that the cross-version came to be recorded after about 6 months of the occurrence and that a belated version like this cannot be relied upon. Learned State counsel has, however, informed that the challan already stands presented and that before his release on interim bail, the petitioner has already undergone custody of about 2 months and 10 days. Learned counsel for the complainant has, however, pointed out that an FIR under Section 420 IPC has now been lodged against the petitioner.

5. I have considered rival submissions addressed before this Court.
6. It is not in dispute that the petitioner was medically examined on the day he was arrested i.e. on the day of occurrence itself and as many as 7 injuries were found on his person. Though the learned counsel for the complainant has vehemently argued that the very fact that the fractures were not found when petitioner's initial medical examination was conducted and it was simply recorded that the petitioner complained of pain on his shoulder and ribs which would render the story of fractures doubtful, but this Court finds that admittedly the petitioner had been taken into custody and medically examined on the very day of occurrence which would rule out possibility of fractures being self suffered. Somehow the X-ray examination was conducted belatedly while in police custody i.e. after about a week of the occurrence, upon which it was found that the petitioner suffered 3 fractures on ribs and also a fracture of glenoid left shoulder region with reverse hill sack

lesion. In these circumstances, this Court would not like to express any doubt regarding the fractures in question.

7. Though learned counsel for the complainant has pointed out that the petitioner is also involved in one more case registered under Section 420 IPC, but this Court finds that the said case is not lodged against the petitioner for any violent act committed by him. The case in hand apparently is a case of cross-versions. The petitioner is alleged to have fired from his licensed weapon, which has already been taken into possession by the Police. It will be debatable as to which of the party was aggressor. The petitioner is not stated to have misused the concession of interim bail. Challan already stands presented. Conclusion of trial is likely to consume time. As such, the petition merits acceptance and is hereby accepted. The order dated 08.09.2020 granting interim bail to the petitioner is hereby made absolute.
8. It is, however, made clear that none of the observations made above shall be taken to be an expression on merits of the main case.

15.11.2021
Vimal

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned: **Yes/No**
Whether reportable: **Yes/No**