

CRM-M-25217-2021

Date of Decision: 15.12.2021

Jagdev Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Amaninder Singh Sekhon, Advocate, for the petitioner.

Mr. Rana Harjasdeep Singh, D.A.G., Punjab.

Mr. Gautam Thapar, Advocate, for the complainant.

AMOL RATTAN SINGH, J. (ORAL)

This petition has been filed under the provisions of Section 439 of the Cr.P.C., for grant of 'regular bail' to the petitioner in case FIR No. 40, dated 18.03.2021, registered at Police Station Nihal Singh Wala, District Moga, for the alleged commission of offences punishable under the provisions of Sections 302/307 of the IPC and Sections 25/27/54/59 of the Arms Act, 1959 [with Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, 1989 and Sections 29/30 of the Arms Act, 1959, having been added and Section 307 of the IPC having been deleted later).

On 05.08.2021, the following order had been passed by this court (also reproducing the earlier order passed on 08.07.2021):-

“Case heard by video conference.

*On 08.07.2021, the following order had
been passed by this court:-*

“Case heard via video conferencing.

Learned State counsel would file an affidavit of a gazetted officer as to what role is actually attributed to the petitioner by the investigating agency as regards the murder of two girls, allegedly at the hands of the son of the petitioner; with prima facie at least the allegation against the petitioner being that it was his licensed fire arm that was used to commit the crime.

Learned counsel for the petitioner submits that at best an offence punishable under Section 30 of the Arms Act, 1959 can be made out against the petitioner, which carries a maximum punishment of 6 months imprisonment alongwith a fine imposed.

Adjourned to 27.07.2021.”

Pursuant thereto an affidavit dated 27.07.2021 has been filed by the DSP, Nihal Singhwala, which is ordered to be taken on record.

As per the said affidavit, very unfortunately two daughters of the complainant were shot by the petitioners' son, both of whom unfortunately died.

It has further been stated that the petitioners' son (Gurvir Singh), used the licensed weapon of his father, i.e. the petitioners' revolver, in the commission of the crime and the petitioner was therefore nominated as an accused, with an offence punishable under the provisions of Section 30 of the Arms Act (with Section 3 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 also added), and with the petitioner arrested on March 20, 2021.

Thus the petitioner is in custody essentially on account of his licensed weapon having been used in the commission of the crime (as per the case of the investigating agency so far).

When this court was consequently inclined to allow this petition and to admit the petitioner to bail, Mr. Gautam Thapar, learned counsel for the complainant, submits that as a matter of fact in terms of the amended Section 3(2) of the Arms Act, 1959, the petitioner cannot possess more than 2 fire arms, whereas admittedly he possesses 3 fire arms as per his licence; and consequently he not having deposited the 3rd weapon with the authority concerned within one year of that amendment, he does not deserve to be admitted to bail.

Upon query to learned State counsel with regard to the above, he submits that undoubtedly the amendment has been made, which has been challenged, but as to whether the weapon allegedly used in the commission of the offence was already licensed to the petitioner prior to the amendment or thereafter, and the effect thereof, he would need to get the affidavit of a gazetted officer filed.

Adjourned to 08.10.2021.

A gazetted officer is now directed to file an affidavit in terms of what has been contended by learned counsel for the complainant. In the meanwhile, looking at the fact that the commission of the offence of murder is allegedly at the hands of the petitioners' son and not the petitioner, with the background of the case (as per the affidavit so far filed by the DSP), being that the daughters of the complainant has refused to go with the petitioners' son who allegedly had an "evil eye" on them,

after which he fired the weapon, in my opinion the petitioner would be entitled to at least the concession of interim bail at this stage.

Consequently, the petitioner already having been in custody for about 4 ½ months, he is ordered to be admitted to bail, upon him furnishing adequate bail and surety bonds to the satisfaction of the trial court/CJM/Duty Magistrate concerned, till the next date of hearing before this court.”

Today, an affidavit dated 14.12.2021, executed by the ASP Nihal Singh Wala, District Moga, has been filed by learned State counsel in court, in which is stated that the petitioner is holding an arms licence with three weapons entered in it, with the said licence having been renewed by the Additional District Magistrate, Moga, w.e.f. 22.11.2020 to 27.11.2025.

That being so, for the reason already recorded in the order dated 05.08.2021 but still without making any comment on the actual merits of the case and with it again to be observed that it is the petitioners' son against whom the allegations of actually having shot two girls dead and with his son being in custody and the allegation against the petitioner being that it was his weapon that was taken by his son and used, and with the petitioner having been in custody till now, the petition is allowed. The petitioner shall be admitted to bail upon his furnishing adequate bail bonds and surety bonds to the satisfaction of the learned trial court/Duty Magistrate/Chief Judicial Magistrate concerned.

December 15, 2021

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Whether speaking/reasoned
Whether Reportable

(AMOL RATTAN SINGH)

JUDGE

Yes
No.