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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.31299 of 2021 (O&M)

Date of decision: 12.08.2021

Gurditta Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Hardeep 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 to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.120 dated 01.11.2020, for offence punishable under Sections 399, 402 of the Indian Penal Code, 1860 (in short 'IPC') and 25 of the Arms Act and 21/25/29 of the NDPS Act, registered at Police Station Bhadur, Barnala, District Barnala.

Counsel for the petitioner, at the very outset, has relied upon the order dated 29.07.2021 passed in CRM-M No.22139, 79, 11276, 5570 of 2021, vide which 05 of the co-accused of the petitioner namely, Nirmal Singh, Satwinder Singh @ Chatta, Gurkirat Singh @ Jassi, Kuldeep Singh @ Deepu and Balwinder Singh @ Jassi, were granted the concession of regular bail. The operative part of the said order, reads as under:-

“In order to avoid any discrepancy in the prosecution version, the facts as noticed in the order dated

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15.12.2020, passed by the Additional Sessions Judge, Barnala, are reproduced as below:-

“As per the prosecution version, on 1.11.2020 Inspector Baljit Singh was present at T point, Bhadaur where he received a secret information against the accused persons namely Harmit Singh, Balwinder Singh, Jagsir singh, Ravinder Kumar, Gajedar Saran and Amra Ram @ Mukesh have formed a gang and they used to loot petrol pump, mobiles and vehicles on the pointing of illegal weapons. On the basis of this secret information, FIR was registered against the above named accused persons and further investigation was ensued and they were arrested on the same day. From the possession of accused Harmit Singh one 32 bore pistol along with 05 cartridges were recovered which were taken into possession by the police. From the possession of accused Jagdish Singh, one pistol of 315 bore alongwith one cartridge of the same bore were also recovered which were also taken into police possession. Search of accused Ravinder Kumar led to the recovery of one 315 bore pistol and 01 cartridge of the same bore which were also taken into police vide separate recovery memo. On the search of accused Gajedar Saran and accused Amra Ram, 500 grams of intoxicant powder and 25 cartridges were recovered from each of them and as such addition of offence u/s 21, 25/29 of the NDPS Act was made vide DDR no.23 dated 1.11.2020. During further interrogation of accused Amra Ram, recovery of one pistol of 32 bore, 5 cartridges and one Baleno car was effected. From the possession of accused Harmit Singh, Balwinder Singh and Jagdish Singh motor cycle bearing no.PB 05Y 1836 and from the possession of accused Ravinder Kumar, Gajedar Saran and Amra Ram motor cycle No.PB-19-P-2482 were also recovered. During the interrogation of accused persons namely Ravinder Kumar, Gajedar Saran, Jagdish Singh and Harmit Singh,

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accused/applicant Kamal Kumar was nominated in this case on 4.11.2020 and he was arrested on 5.11.2020 and 06 live cartridges were recovered from him. From the possession of accused/applicants Gurkirat Singh, Satwinder Singh one motor cycle no.PB-19-E-3908, whereas from the possession of accused/applicants Kamal Kumar and Gurdit Singh one scooty without number plate were also recovered. Then on 8.11.2020 accused/applicant Manga Singh was also nominated in this case and from his possession 06 cartridges of 12 bore recovered and on 12.11.2020 one 32 bore pistol and 03 cartridges were also recovered from his possession. On 5.11.2020 accused Satwinder Singh was arrested in this case and from his possession 4 cartridges were recovered from his possession. Similarly from the possession of accused Gurdit Singh who was also arrested on 5.11.2020, similar number of cartridges to say four were also recovered. One 32 bore pistol and four cartridges were also recovered from the possession of accused Lovepreet Singh who was arrested in his case on 7.11.2020. From the possession of accused Karanvir Singh, who was arrested on 8.11.2020 10 cartridges of 12 bore were recovered and on 11.11.2020 from his possession 260 grams of intoxicant powder and one pistol of 32 bore along with 3 cartridges were recovered. From the possession of accused Jaspreet Singh one 32 bore pistol along with 3 live cartridges were recovered when he was arrested on 8.11.2020. Likewise on 8.11.2020 from the possession of accused Amanpreet Singh four cartridges of 12 bore were also recovered. From the possession of accused Amritpal Singh one pistol of 32 bore and 2 cartridges were recovered and from the possession of accused Kuldeep Singh, who was arrested on 1.12.2020, 5 cartridges 7.65 were recovered from his possession on 4.12.2020 whereas no recovery of any incriminating material was

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effected from accused Balwinder Singh and Lovejot Singh, Devinderpal Singh and Nirmal Singh who were arrested on 1.11.2020, 10.11.2020, 25.11.2020 and 28.11.2020 respectively. Whereas accused Prem Parkash and Sajan are still to be nabbed in this case and further investigation is going on.

Counsel appearing for the petitioner – Nirmal Singh, has argued that he was nominated in the case on the statement of one Jagraj Singh in whose present, the petitioner has made the alleged extra-judicial confession that Nirmal Singh on 27.11.2020, came to the house of this witness Jagraj Singh, being his co-villager and confessed that he used to go to Madhya Pradesh in order to bring arms and ammunition for the purpose of selling the same in the States of Punjab and Rajasthan. He met one Gajju, who is resident of Rajasthan and one Davinderpal resident of Punjab, who used to demand arms and ammunition from him and he would supply the same to them. Since Davinderpal stands arrested, Nirmal Singh apprehended that the police may also arrest him. Counsel for the petitioner has further submitted that after the arrest of the petitioner, no recovery was effected from him and it will be a matter of trial whether the extra-judicial confession made before Jagraj Singh is admissible in evidence against the petitioner as the same is not corroborated by any recovery. It is also argued that the petitioner is in custody for the last 07 months and 28 days and he is not involved in any other case under Section 399 IPC. It is further submitted that though, the petitioner – Nirmal Singh is involved in 02 other cases, however, he is on bail in those cases.

Counsel appearing for the petitioner – Kuldeep Singh @ Deepu, has argued that he was also not named in the FIR and his name surfaced in the disclosure statement of the co-accused Jagdish Singh and Harmeet Singh wherein it is stated by the co-accused Harmeet Singh that he used to supply the weapons to the co-accused Manga Singh, through his accomplice i.e. the petitioner – Kuldeep Singh @ Deepu. It is also submitted that even with regard to the petitioner – Kuldeep Singh, the police recorded his extra-judicial confession before one Shamsher Singh, who stated in his statement under Section 161 Cr.P.C. that Kuldeep Singh came to his house and made a confession that he is in the business of bringing the illegal weapons

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after he came in contact with a person namely Gajju, who is resident of Rajasthan and he used to purchase arms and ammunition from him. It is also stated that the petitioner made the alleged extra-judicial confession on coming to know that 02 of the co-accused namely Gurkirat Singh and Satwinder Singh, have already been arrested. It is further argued that it will be a matter of trial whether the said statement of Shamsher Singh is admissible against the petitioner or not as the alleged recovery from the petitioner – Kuldeep Singh i.e. 05 live cartridges, 7.65 bore is planted. Lastly, it is submitted that the petitioner – Kuldeep Singh is in custody for the last 07 months and he is not involved in any other case.

Counsel appearing for the petitioner – Balwinder Singh @ Jassi, has argued that the petitioner – Balwinder Singh @ Jassi, is in custody for the last 08 months and he is on bail in another case. It is further submitted that though the petitioner was named in the secret information, however, there is no allegation from where, he has acquired the illegal weapons. Lastly, it is argued that as per the police version, nothing was recovered from the petitioner and therefore, the secret information do not find any corroboration as no recovered was effected from him.

Counsel appearing for the petitioner – Jaspreet Singh @ Lady, at the very outset, seeks permission to withdraw the petition qua petitioner No.1 – Jaspreet Singh @ Lady as he is found involved in 13 other FIRs.

Ordered accordingly.

Counsel appearing for the petitioners – Gurkirat Singh @ Jassi and Satwinder Singh @ Chatta, has argued that they are the first offenders and are not involved in any other case and they are in custody for the last more than 08 months. It is further submitted that both the petitioners were not named in the secret information and they were nominated later on in the disclosure statement made by the co-accused Gajedar Saran that he along with his accomplices namely Kamal Kumar and Gurdit Singh has delivered the weapons to the petitioners. Lastly, it is argued that from the possession of the petitioners, only one motorcycle was recovered and, therefore, the disclosure statement of the co-accused do not find any corroboration.

In reply, counsel for the State has stated that on the basis of the secret information, the FIR was registered against 06 persons and thereafter, the other persons were also nominated in the case and number of weapons and

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cartridges were recovered. Counsel for the State, however on the basis of the Custody Certificates, could not dispute the total custody of the petitioners as well as the fact that Shamsher Singh, Lovepreet Singh and the petitioners Balwinder Singh, Gurkirat Singh and Satwinder Singh are not involved in any other case. The recovery effected from the petitioners, as per the allegations in the FIR and the investigation, is also not disputed. It is further argued that challan stands presented, however, no prosecution witness has been examined so far.

After hearing the counsel for the parties, considering the fact that the petitioners are either first offenders or are on bail and not involved in any other case in such or similar case; their involvement is based on extra-judicial confession or disclosure statement, which is not followed by recovery of any weapon, though, Balwinder Singh @ Jassi, is named in the secret information, however, no weapon was recovered from him as well as from Nirmal Singh; till date no prosecution witness has been examined; the custodial interrogation of the petitioners is not required and the conclusion of the trial will take some time due to COVID-19 situation, the present petitions are allowed and the petitioners namely Nirmal Singh, Satwinder Singh @ Chatta, Gurkirat Singh @ Jassi, Kuldeep Singh @ Deepu and Balwinder Singh @ Jassi are directed to be released on bail subject to their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.”

Counsel for the petitioner has further submitted that the petitioner is in custody for the last 09 months and he is not involved in any other case. Lastly, it is submitted that the petitioner was nominated in the case, on the basis of the disclosure statement of the co-accused, who were arrested prior to the petitioner.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail.

Without commenting anything on merits of the case,

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considering the fact that the petitioner is in custody for the last 09 months; the co-accused of the petitioner are already released on bail; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time due to COVID-19 situation, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

12.08.2021

yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No