

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

CRM-M-37880 of 2020

DATE OF DECISION :- January 22, 2021

Dayal Dass

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. M.S. Khaira, Sr. Advocate
with Ms. Ritu Punj, Advocate for the petitioner.

Mr. J.S. Ghumman, DAG, Punjab.

Mr. Kanwaljeet Singh Brar, Advocate for the complainant.

The case has been taken up through Video Conferencing.

This petition for regular bail has been filed by petitioner Dayal Dass, aged about 65 years, son of Mangal Dass, resident of Tapa, Tehsil Tapa, District Barnala, an accused in F.I.R No. 56 dated 12.5.2017 under Sections 302, 307, 450, 245, 148, 149, 120-B IPC and Section 25/27 of the Arms Act registered with police station Tapa, District Barnala.

Briefly stated the facts of the case are that criminal machinery in this case was set into motion by Mahant Gopal Dass, Mohtamim of Dera at Tapa, District Barnala, who in his statement got recorded with the police on 12.5.2017 at about 3.30 P.M. stated that on that very day at about 6.30 A.M in the morning, while he was doing worship in the Dera and he was joined in doing so by Laxmi Narain Pujari, Ram Dayal, Bhupinder Dass,

Gulab Ram, Nikka Khan, Raghubir Dass, Kishan Dass, Mehnga Ram Sewadars in doing so. At that time Hemant Kumar @ Madho armed with a pistol, Raghunandan Dass armed with .12 bore gun, Rameshwar Dass armed with a gandasa, Varinder Kumar armed with .12 bore gun, Ramesh Kumar @ Meshi armed with a spade, petitioner Dayal Dass having a spade, Gobind Dass armed with a stick, Bhuvneshwar Dass having a pistol, Kapil Kumar having a stick suddenly entered the Dera and started pelting brick bats besides firing shots. When Laxmi Narain came in the varandah then Hemant Kumar @ Madho fired shots towards Laxmi Narain and Gulab Ram. Ram Dayal, Nikka Khan, Raghubir Das, Krishan Kumar and Mehnga Ram also suffered fire arm injuries. All the culprits caused destruction of sacred pictures and thereafter left the spot along with their respective weapons. The injured were taken to Civil Hospital, Tapa where Laxmi Narain was declared dead. Though some of the injured were admitted there, the remaining were referred to Civil Hospital, Barnala. On the way Gulab Ram succumbed to the injuries. The motive for the incident was that Rameshwar Dass was proclaiming himself to be Chela of Parmanand. Civil litigation had been decided in favour of the complainant even then accused had carried out the attack to grab property of Dera.

After registration of the F.I.R the investigation in the case started. The accused including the present petitioner Dayal Dass were arrested in this case. After completion of investigation challan has been filed in the Court and the matter is pending trial. Accused Dayal Dass @ Leela had brought a petition for grant of regular bail before the Court of Sessions at Barnala, such application was assigned to Additional Sessions Judge, Barnala, who vide order dated 29.9.2020 dismissed the same. Feeling

dissatisfied petitioner accused has approached this Court craving for grant of similar relief which request is being opposed by the State counsel as well as counsel representing the complainant.

I have heard learned counsel for the petitioner, learned counsel for the complainant and learned State counsel besides going through the record.

I find that the petition is doomed for failure. Here the allegations against the petitioner are very grave and serious that he while armed with spade was part of an unlawful assembly and his co-accused Hemant Kumar @ Madho was having a pistol, Raghunandan Dass 12 bore gun, Bhuvneshwar Dass was armed with a pistol whereas the other co-accused were also having dangerous weapons. In that way they had formed an unlawful assembly and indulged in rioting. Obviously the unlawful assembly had a common object since they had come together and attacked the victims at the same time. Two persons had lost their lives whereas others had suffered injuries. Section 149 IPC clearly provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly then every person who at the time of committing of that offence is a member of the same assembly is guilty of that offence. Thus Section 149 IPC provides for joint and vicarious liability of each member of unlawful assembly. Under the circumstances, the argument advanced by learned Senior counsel for the petitioner that petitioner Dayas Dass was armed with a spade and no grievous injury is attributed to him, therefore he be granted concession of bail cannot be accepted.

In view of Section 149 IPC, the incident cannot be dissected in

parts so as to see individual role of every assailant and to determine his criminal liability individually irrespective of the criminal acts committed by his co-accused/assailants. Similarly another submission made by learned Senior counsel for the petitioner that after presentation of challan in this case an enquiry into the matter had been conducted by DSP Barnala on an application filed by Rajinder Kumar son of Dayal Dass, resident of Tapa vide which he had concluded that from CCTV footage Dayal Dass (present petitioner) was found to be there inside Gurudwara premises though at the same time it has been suggested that this fact be brought to the notice of the trial Court. Learned Senior counsel relying upon this report has contended that petitioner is innocent and should be granted concession of bail more particularly when he is in custody for the last more than 3 ½ years i.e. w.e.f. 14.5.2017. However, I do not find myself in agreement with learned Senior counsel for the petitioner which is for various reasons. Firstly after completion of investigation and filing of challan it is for the trial Court to reach conclusion with regard to guilt of the accused taking into view the evidence adduced by the prosecution, statement of accused under Section 313 Cr.P.C. and defence evidence if any adduced on behalf of accused. A police officer of rank of Deputy Superintendent of Police is nobody to give any report with regard to innocence of an accused, when the matter is pending trial, therefore, report of Deputy Superintendent of Police is not of any help to the petitioner in seeking regular bail. As regards petitioner being behind bars for a period of 3 ½ years though it is a matter of record but one thing has to be taken note of that on account of unprecedented situation due to breaking out of Corona pandemic working in the Courts had come to stands still though of the late the functioning is getting back to normal.

Keeping in view the gravity and seriousness of allegations petitioner can certainly not ask for being released on bail on account of long incarceration. Further more the apprehension expressed by the State counsel that if released on bail there is likelihood of petitioner trying to tamper with the prosecution evidence by giving threat or inducement to the prosecution witnesses and attempting to abscond even to prolong the trial cannot be taken lightly.

Thus, no ground for grant of regular bail is made out. The petition so filed by the petitioner stands dismissed accordingly.

**(H.S. MADAAN)
JUDGE**

January 22, 2021

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No