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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-821-2022 (O&M)
Date of Decision: 06.09.2022

Amit Kumar

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. A.P.S. Deol, Senior Advocate assisted by
Mr. Vishal Rattan Lamba, Advocate, for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

Mr. A.P.S. Brar, Advocate, for the complainant.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No. 0128 dated 20.08.2020, under Sections 302, 307, 447, 511, 148, 149, 120-B IPC (Sections 460 and 509 IPC added later on) and Sections 25, 27 of Arms Act, registered at Police Station Bahawala, District Fazilka

It has been submitted by Mr. A.P.S. Deol, learned Senior Counsel with Mr. Vishal Rattan Lamba, Advocate that the petitioner is in custody from 20.08.2020 which is more than 2 years. He further submitted that it is a case where as per the allegations some of the family members belonging to the petitioner had attacked the complainant and his party and

there was a land dispute between them. He further submitted that even as per the FIR and as per the prosecution story itself the petitioner was not present on the spot and he was arraigned as an accused on the ground that he was the main conspirator and it was with his assistance that the offence was committed. Learned Senior Counsel further submitted that in fact it was a case of a land dispute and the opposite party had attacked the family of the petitioner and thereafter, petitioner party used a licensed arm which might have caused injury and it was a case of self defence since the aggressor party was the opposite party. He further submitted that all the factors are to be seen at the time of trial and the petitioner is not involved in any other case and has got clean antecedents. He further submitted that be that as it may, he has already faced incarceration for more than 2 years and the trial is being prolonged in view of an application filed by the prosecution under Section 193 of the Code of Criminal Procedure for summoning of the additional accused. He submitted that the charges were framed on 28.01.2022 and till date no prosecution witness has been examined and not only that now the application under Section 193 of the Code of Criminal Procedure has been allowed but even now the Court has also directed further investigation in the present case and with a result that the trial is being again delayed for longer period of time. He further submitted that once it is the story of the prosecution itself that the petitioner was not even present at the spot, the petitioner may be considered for the grant of regular bail especially considering his long custody.

On the other hand, Mr. Kunal Viyanak, learned Assistant Advocate General, Punjab has submitted that it is correct that the petitioner is in custody from 20.08.2020 which is more than 2 years and no

prosecution witness has been examined. He further submitted that it is also correct that after a number of adjournments the application filed by the prosecution under Section 193 of the Code of Criminal Procedure for summoning of the additional accused was allowed and it is also correct that the Illaqa Magistrate has granted permission for further investigation. He has also submitted that the petitioner is not involved in any other case. However, he has opposed the grant of regular bail to the petitioner on the ground that it is a case under Section 302 IPC and the matter is serious in nature whereby a death has been caused by use of firearm.

Mr. A.P.S. Brar, Advocate appearing on behalf of the complainant has opposed the grant of regular bail to the petitioner on the ground that the matter is not only serious in nature but also that the petitioner and his family members are filing a number of petitions for seeking further investigation and re-investigation and it is a case where a death has been caused by way of firearm and therefore, the petitioner does not deserves the concession of regular bail.

I have heard the learned counsel for the parties.

It is a case where the petitioner has faced incarceration for more than 2 years. The petitioner is not involved in any other case. As per the FIR and as per the prosecution story itself, the petitioner was not present on the spot and his role was with regard to indulging into conspiracy. The submission made by the learned Senior Counsel for the petitioner that it is yet to be ascertained at the time of trial as to whether who was the aggressor and as to whether the party belonging to the petitioner had used the firearm by way of self defence or not carries weight. Apart from the same, it is not

the case of the State nor it has been argued by the learned State counsel that in case the petitioner is released on bail, then he may influence any witness or may tamper with evidence or may flee from justice.

In view of the aforesaid facts and circumstance and considering the fact that the petitioner has already faced incarceration for more than 2 years, the petitioner deserves the concession of regular bail.

Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

All the miscellaneous applications, if any, shall be deemed to be disposed of since the main case has been disposed of.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

06.09.2022.

rakesh

(JASGURPREET SINGH PURI)**JUDGE**

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No