

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-1776-2022(O&M)
Date of decision : 27.04.2022

Kuldeep Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Vishwajit Bedi, Advocate
for the petitioner.

Mr.Sarabjit Singh Cheema, AAG, Punjab.

Mr.Amit Arora, Advocate
for the complainant.

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 439 Cr.P.C. for granting regular bail to the petitioner in FIR no.70 dated 18.06.2021 registered under Sections 302, 148, 149 IPC and Sections 25/27/29/54/59 of the Arms Act and Section 3(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "SC & ST Act"), at Police Station Jhabal, Tehsil and District Tarn Taran, Punjab.

Learned counsel for the petitioner has submitted that in the present case, there is no specific allegations against the petitioner as per the FIR. It is further submitted that there is only one injury suffered by the deceased as per the post mortem report, whereas the petitioner and co-accused Hardeep Singh, who have been stated to be with a 12 bore double barrel gun and a pistol, respectively, had both fired. It is further submitted

that as per the recovery memo, the recovery of *kirpan* has been effected from the petitioner and not the 12 double barren gun. It is further submitted that there is no ballistic report or FSL report in the present case so as to determine the nature of the said bullet injury. It is also submitted that offence under Section 3(1) of the SC & ST Act has been added subsequently.

Learned State counsel as well as learned counsel for the complainant have opposed the present petition for regular bail and have submitted that a perusal of the FIR would show that the petitioner and Hardeep Singh are the main accused. It has been submitted that an active role has been attributed to the petitioner in the FIR and that the petitioner and said Hardeep Singh had fired at two instances, firstly at the party of Rajbir Singh, with whom they were having a fight at 07:30 PM near Gurudwara Baba Bir Singh and secondly, when the complainant, wife of whom is the Sarpanch of the village, along with his son, had gone to resolve the matter, then the petitioner who was stated to be armed with 12 bore double barrel gun and Hardeep Singh who was stated to be armed with a pistol, had started firing at them and Shagundeeep Singh (son of the complainant) had received a bullet on the right side of his neck and had fallen down and succumbed to the injuries. It is further submitted that Hardeep Singh and the present petitioner are real brothers and since Hardeep Singh was arrested on 25.06.2021, i.e. prior to the present petitioner who was arrested on 29.06.2021, thus, the 12 bore double barrel gun, which was used by the petitioner in the occurrence, was recovered from Hardeep Singh, from the common residence of Hardeep Singh and the petitioner. It is further submitted that in the present case, Rajbir Singh,

Sukhdev and Baldev Singh are the eye witnesses and Dilbagh Singh is the complainant, as well as an eye witness and none of them have been examined and thus, in case the petitioner is granted regular bail, there is every possibility of him threatening the said witnesses. It is also submitted that even a perusal of the post mortem report would show that a lacerated wound was present on the front of the chest of the deceased, the upper lobe of the right lung had been punctured, another punctured wound was present in the heart, the left lung middle lobe was also punctured and injuries 5th, 6th and 7th posterior ribs were also fractured. It is also submitted that 5 empty cartridges of 12 bore double barrel gun had been recovered from the spot of the occurrence. It is also submitted that in the present case, the petitioner, along with other co-accused, has committed the murder of the complainant's son without there being any overt act committed by the complainant party. It is also submitted that there was a motive behind murdering the son of the Sarpanch (complainant's wife) inasmuch as, the petitioner had even raised a *lalkara*, as has been alleged in the FIR, that the Sarpanch had helped Baldev Singh in getting the fish pond from the Panchayat on lease, who belonged to the party opposed to the petitioner and his brother. It is submitted that even the custody undergone by the petitioner is not substantial in the present case.

This Court has heard learned counsel for the parties and has perused the record.

A perusal of the FIR would show that specific allegations have been made against the petitioner. The present petitioner is stated to have been armed with a 12 bore double barrel gun and is stated to have fired firstly, at the party of Rajbir Singh near the Gurudwara and when the

husband of the Sarpanch (complainant) and his son Shagundee Singh tried to intervene for settling the matter, then the petitioner is alleged to have raised *lalkara* that the Sarpanch (deceased's mother) had helped Baldev Singh to get the fish pond on lease from the Panchayat and they should be taught a lesson and then in order to take revenge from them, the present petitioner as well as Hardeep Singh fired at them and a bullet hit the son of the complainant on the right side of his neck and he fell down and he died on account of said injury. As per the prosecution version, a 12 bore double barrel gun, which was used by the present petitioner, has been recovered from the common house of the petitioner and his brother Hardeep Singh. The said recovery has been made from Hardeep Singh, since he had been arrested on 25.06.2021, i.e. prior to the arrest of the petitioner on 29.06.2021. As per the prosecution case, eye witnesses Rajbir, Sukhdev and Baldev had also stated that the petitioner was actively involved in the incident and he had fired shots. The said three witnesses and the complainant Dilbagh Singh are yet to be examined and thus there is a possibility that the petitioner might threaten the said witnesses if enlarged on bail. As per prosecution case, five empty cartridges of 12 bore double barrel gun have also been recovered from the place of occurrence. The motive behind killing the son of the complainant is also apparent from the reading of the FIR inasmuch as, the complainant's wife (Sarpanch) had helped Baldev Singh to get the fish pond on lease from the Panchayat and the said Baldev Singh belongs to the party opposite to that of the petitioner and his brother. The portion pertaining to the injuries suffered by the deceased, as per the post-mortem report, is reproduced hereinbelow:-

“ENTRY WOUND.

3 CM X 3 CM LACERATED WOUND PRESENT ON THE FRONT

OF THE CHEST JUST BELOW THE MIDDLE ONE THIRD OF THE RIGHT CLAVICLE UNDERLYING SOFT TISSUE VISIBLE. ON DISSECTION TRACK OF THE WOUND IS MEDIAL POSERIOR AND DOWARDS. UNDERLYING CLACICLE BONE FRACTURE. UPPER LOBE OF THE RIGHT LUNG PUNCTURED 200ML BLOOD PRESENT IN BILATRAL PLURAL CAVITY. A PUNCTURED WOUND PRESNT IN THE HEART. BLOOD PRESENT IN PERICARDIUM, LEFT LUNG MIDDLE LOBE PUNCTURED. LEFT 5th, 6th AND 7th POSTERIOR RIBS FRACTURED. FOREIGN BODY RETRIEVED FROM THE LEFT PLURAL CAVITY.”

A perusal of the same would show that apart from a punctured wound present in the heart and puncture of the upper lobe of the right lung, even 5th, 6th and 7th posterior ribs had been fractured. It is not the case of the petitioner that the present case is a case of version and cross version or that any overt act had been done by the complainant party or that any injury had been caused to the petitioner or his accomplices. With respect to the argument of learned counsel for the petitioner to the effect that there is no ballistic report or FSL report, with respect to the injuries suffered by the deceased, it has been pointed out that the samples have been sent and the report is awaited from the FSL. At any rate, at this stage, the said plea would not help the petitioner and thus, the petitioner, in view of the above said facts and circumstances, is not entitled to the grant of concession of regular bail, at this stage.

Keeping in view the above said facts and circumstances, the present petition is dismissed, at this stage.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose

Pending miscellaneous application, if any, stands disposed of in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

April 27, 2022
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No