

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

(224)

CRM-M-7019-2022

Date of Decision: 08.08.2022

Jaskaran Singh @ Jassu

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Gursimran Singh Madaan, Advocate
for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

Mr. Sidhant Vermani, Advocate for the complainant.

VIKAS BAHL, J.(ORAL)

1. Prayer in the present petition is for grant of regular bail to the petitioner in FIR No.345 dated 23.12.2020 registered under Sections 302/307/34 of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) and Sections 25 and 27 of the Arms Act, at Police Station Chattiwind, District Amritsar.

2. The FIR has been registered on the statement of Mandeep Kaur who had stated that on 22.12.2020, her husband namely Manpreet Singh had gone to Village Varpal, where the father of the petitioner (Sajjan Singh) met her husband Manpreet Singh and made a complaint to him regarding the defective servicing of the Air Conditioner installed in his house and in anger, gave beatings to the said Manpreet Singh, who, after that, went back home and informed about the entire incident to the respectables of the village who then told the said Manpreet Singh and Mandeep Kaur that they would call the

father of the petitioner in the Panchayat on the next date and on the next date, the complainant alongwith her husband and other persons from her family went to the respectables of the Panchayat, where the respectables of the Panchayat sent messages to the father of the petitioner again and again to come present before the Panchayat but the father of the petitioner did not come and on account of the same, the complainant, her husband namely Manpreet Singh, her brother namely Angrej Singh (since deceased), her brother-in-law namely Lovepreet Singh @ Lalli and two brothers-in-law namely Sukhraj Singh @ Sunny and Gurpreet Singh @ Rana, alongwith other family members, reached the main gate of petitioner's house for complaining regarding the abovesaid, where the petitioner and his father were already standing at the gate and the said petitioner, went inside the house and got a 12 bore gun and fired a direct shot towards the complainant party with the intention to kill and the fire shot hit the right eye and face of Angrej Singh (deceased) and some pellets also hit the complainant's brother-in-law namely Lovepreet Singh. The allegation against the father of the petitioner was that he had fired in the air.

3. A cross-version was also recorded vide DDR No.18 dated 09.03.2021 under Sections 452/427/506/148/149 of the IPC on the statement of Salwinder Kaur, mother of the petitioner, to the effect that the deceased, alongwith the complainant and a large number of other persons, had come towards the house of the petitioner, where they all had picked up iron sabbal/rods, brickbats from the flour mill adjoining the gate of the petitioner and started breaking the things and they entered into the house of the petitioner and the said persons broke the window AC as well as Pajero car, which was in the house of the petitioner. In order to save themselves from the mob/crowd, the petitioner and his father had fired the said shots.

4. Learned counsel for the petitioner has submitted that even as per the version given by the complainant-Mandeep Kaur, it is apparent that the complainant party had come to the house of the petitioner and there were large number of persons who were with the complainant party. It is argued that even from the version given by the complainant, it is apparent that the complainant party was the aggressor. It is further argued that as per the version given by the mother of the petitioner, for which the complainant party in the FIR is being prosecuted, under various Sections including Section 452 of IPC i.e. commission of house-trespass, the complainant party had in fact, entered the house of the petitioner, having rods and brickbats and thus, it was only while exercising the right of the private defence that the incident had taken place.

5. Learned counsel for the petitioner has relied upon Section 100 of the IPC in order to state that in such a case, moreso when there is apprehension that the mob/crowd could have either caused death or grievous hurt to the petitioner and his family, then the action taken by the father of the petitioner and the petitioner would come within the meaning of "Private Defence" as stated in Section 100 of the IPC.

6. It is further argued that from the FIR and the cross version, it is apparent that the petitioner and his father did not have any intent nor any motive to kill the deceased or to injure any person. It is stated that the petitioner had fired only one shot and has referred to the photographs Annexure P-4 to show that the air conditioner, car etc. were damaged by the complainant party, who had entered into their house and had themselves gone there for settling the matter with the petitioner and his family members. It is further submitted that a detailed enquiry report dated 16.02.2021 was submitted and even as per the said enquiry report, it was noticed (at Page-55 of the paper book) by the Superintendent of Police, P.B.I./Operations,

Amritsar Rural that Manpreet Singh had gone to the house of the petitioner in a lot of anger along with other persons and had damaged the main gate of the house of the petitioner and his father and the same was done with iron rods and bricks and had even damaged the car, which was parked in the courtyard and the window AC and then the father of the petitioner had fired a shot in the air to save himself from the assailants and the present petitioner had then fired a one shot, which hit Angrej Singh on his right eye and right side of the face and the pellets had hit Lovepreet Singh. It is submitted that on the basis of the said allegations, the cross version, which included Section 452 was registered.

7. Learned counsel for the petitioner has also submitted that at the time of exercising the right to private defence, a person cannot weigh “with golden scales” as to what is the maximum amount of force that can be applied so as to be within the right of private defence. It is further submitted that the petitioner is an English Lecturer in Khalsa College associated to GNDU, Amritsar, Chowk Mehta, District Amritsar and is not involved in any other criminal case and has been in custody since 23.12.2020 and the challan has been presented and out of 26 witnesses, four material witnesses have been examined and two witnesses have been given up. It is stated that on 05.07.2022, the case had been adjourned for the examination of Gurpreet Singh @ Rana but the said Gurpreet Singh @ Rana had been given up on 29.07.2022. It is submitted that since the material witnesses have been examined, thus the question of the petitioner influencing the witnesses does not arise and 20 witnesses are yet to be examined and thus, the trial is likely to take time.

8. On the other hand, learned counsel for the State and the complainant have opposed the present petition for grant of concession of regular bail to the petitioner and have submitted that the question i.e. as to

whether the said act was done while exercising the “right of private defence” or not, cannot be considered at the present stage as the same can only be considered at the time of trial. It is further submitted that the two injuries which have been caused to the deceased, one on the eye and the other on the face, have been attributed to petitioner and some pellet injury had also been caused to Lovepreet Singh by petitioner.

9. Learned counsel has further submitted that in the present case, the petitioner has exceeded his right of private defence inasmuch as, there was no occasion for him to have fired the shots towards the deceased person and he could have fired in the air to avoid the complainant party from injuring the petitioner. It is submitted that none of the persons from the complainant party were armed with any pistol or rifle and thus, the petitioner has exceeded his right of private defence. It is stated that in the present case, the eye-witnesses have not been examined as yet and thus, the petitioner does not deserve the concession of regular bail.

10. This Court has heard the learned counsel for the parties and has perused the paper-book.

11. On 05.07.2022, when this came up for hearing, this Court was pleased to pass the following order:-

“CRM-22627-2022

For the reasons mentioned in the application, same is allowed subject to all just exceptions and Annexure P-8 is taken on record.

Main Case

Learned State counsel as well as learned counsel for the complainant has pointed out that in the present case, only one eye witness i.e. Gupreet Singh @ Rana is left to be examined and

the next date for hearing is fixed for 29.07.2022. The IO ASI Vijay Kumar, who is present in the Court, as well as the counsel for the complainant have undertaken to produce the said Gupreet Singh @ Rana before the trial Court on 29.07.2022 so that the said witness may be examined.

The trial Court is directed to examine the said witness as expeditiously as possible and the parties are also directed to cooperate with the examination of the said witness.

Adjourned to 08.08.2022.”

12. Learned counsel for the petitioner has submitted that on 29.07.2022, the said alleged eye witness Gurpreet Singh @ Rana had been given up and thus, all the material witnesses in the present case have either already been examined or have been given up.

13. In the present case, even as per the version given by the complainant, it is prima facie apparent that it is the complainant who, along with a large number of other persons had gone to the house of the petitioner. As per the version of the petitioner's mother, it was the complainant, who along with a large number of persons, had entered the house of the petitioner and it was stated that they were also carrying iron rods and brick bats and had started breaking the things and had even broken the Window AC and had also caused damage to the Pajero Car of the petitioner. The complainant party is thus, being proceeded against under Sections 452, 427, 506, 148, 149 of the IPC.

14. In view of the said circumstances, where, even as per the complainant's case, the complainant party had gone to the house of the petitioner, whether the petitioner would be entitled to raise a plea of “Right of

of trial, but keeping in view the facts and circumstances, moreso the fact that the offence under Section 452 of the IPC is prima facie being made out against the complainant party and further the fact that even as per the prosecution version, the petitioner is stated to have fired only one shot and also the fact that the petitioner is stated to be English Lecturer in Khalsa College, Amritsar (P-2) and that as per the detailed enquiry report dated 16.10.2021, conducted by the Superintendent of Police, P.B.I./Operations, Amritsar Rural, it has been observed (at Page-55 of the paper book) that Manpreet Singh had gone to the petitioner's house in a lot of anger along with some other persons and had damaged the main gate of the house of the petitioner and they were also carrying iron rods and bricks and had even damaged the car, which was parked in the courtyard as well as the Window AC and the fact that the petitioner is not involved in any other case and also the fact that the challan in the present case has been filed and there are 26 witnesses, out of whom, four material witnesses have been examined and two material witnesses have been given up and thus, the question of the petitioner influencing the other witnesses does not arise and also the fact that there are 20 more witnesses yet to be examined and thus, the trial is likely to take time, the present petition for regular bail is allowed and the petitioner is directed to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to him not being required in any other case.

15. However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

16. 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 of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

August 08, 2022
Manpreet

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