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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-7057-2022
Date of Decision: 05.07.2022

Sushil Kumar @ Happy

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Bipin Ghai, Senior Advocate assisted by
Mr. Rishabh Singla, Advocate, for the petitioner.

Mr. Davinder Bir Singh, DAG, Punjab.

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. 143 dated 26.08.2021, under Sections 302, 307, 34 IPC and Section 25/27 of Arms Act, 1959 (Offence under Section 302 IPC deleted vide Rapat No.22 dated 18.11.2021 and offence under Section 304 IPC was added), registered at Police Station Guruharsahai, District Ferozepur.

It has been submitted by the learned Senior Counsel for the petitioner that the petitioner is in custody from 01.09.2021 and the investigation of the case has been completed and challan has been presented. He further submitted that the present FIR was earlier lodged under Sections 302, 307, 34 IPC and Section 25 and 27 of Arms Act against the petitioner and the other co-accused namely Jatinder on the allegations of the

complainant that some persons had come to the restaurant of the petitioner and the other co-accused for having a kitty party and thereafter a dispute arose between the co-accused namely Jatinder and the members of the kitty party over the quality of food and thereafter the petitioner had come on the spot and was also possessing a licenced weapon. The learned Senior Counsel further submitted that a scuffle took place when a member of the kitty party tried to snatch the weapon from the petitioner which resulted in firing from the weapon and which resulted in death of one Rajesh Kumar Chalana and one more lady was also injured. He further submitted that there was neither any intention of the petitioner nor any role attributable to the petitioner so far as Sections 302 and 307 IPC are concerned nor was any violation of the provisions of the Arms Act since the weapon was a licenced weapon. The learned Senior Counsel further submitted that thereafter during investigation it has been found by the police that the pistol was licenced pistol and the petitioner had taken the pistol in self defence but the same being snatched by the complainant and other members of the kitty party and, therefore, now the challan has been presented only under Section 304A IPC and Section 30 of the Arms Act and, therefore, has prayed for the grant of regular bail to the petitioner. The learned Senior counsel further submitted that the petitioner is not involved in any other case and has got clean antecedents.

On the other hand, Mr. Davinder Bir Singh, learned Deputy Advocate General, Punjab has stated that an affidavit has been filed by the Deputy Superintendent of Police, Guruharsahai, District Ferozepur and while referring to the same, he has submitted that during investigation of the case it was found that the petitioner was having a licenced pistol and during

scuffle suddenly a shot was fired which hit on the jaw of Rajesh Kumar Chalana and he died and Sunita was injured and, therefore, offence under Sections 304A/34 IPC and Section 30 of the Arms Act was made out in the present case and after the completion of the investigation it was found that offence under Sections 302, 307 IPC and Section 25/27 of Arms Act was not made out and, therefore, a supplementary challan has been presented against the petitioner and the co-accused under Sections 304A/34 IPC and Section 30 of the Arms Act. Learned State counsel further submitted that it is correct that the petitioner is not involved in any other case and has got clean antecedents.

I have heard the learned counsel for the parties.

The petitioner is in custody from 01.09.2021. The investigation of the case has been completed. As per the affidavit filed by the State and the arguments raised by the learned State counsel, the challan has now been presented under Section 304A/34 IPC and Section 30 of the Arms Act. As per the learned State counsel no recovery is to be effected from the petitioner. As per the affidavit, during investigation it was found that the petitioner was holding a pistol which was a licenced pistol and which was being snatched by the members of the kitty party and as per the prosecution itself, the fire was shot due to snatching of the pistol as per the affidavit. Furthermore it is not the case of the State that in case the petitioner is released on bail, then he may influence any witness or may tamper evidence or may flee from justice.

Therefore, without commenting on the merits of the case and considering the totality of circumstances, 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.

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.

05.07.2022

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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