

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-9042-2021 (O&M)

Date of Decision: 11.03.2022

Gurlal Singh @ Dogar

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Ishma Randhawa, Advocate, for the petitioner.

Mr. K.S. Sidhu, DAG, Punjab.

Mr. Mohinder Kumar, Advocate, for the complainant.

Through Video Conferencing

JASGURPREET SINGH PURI, J. (Oral)

The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.0168 dated 02.08.2018, under Sections 307, 324, 427, 148 and 149 IPC and Section 25 of the Arms Act, registered at Police Station Chheharta, District Amritsar.

It has been submitted by the learned counsel for the petitioner that the petitioner had earlier also filed a petition for grant of bail before this Court in CRM-M-44405-2019 and vide order dated 02.11.2020 (Annexure P-5) the same was dismissed by this Court. She further submitted that more than one year has elapsed and the present petition has been filed due to

change of circumstances. She further submitted that thereafter the trial of the case did not progress effectively and even the official witness ASI Roop Lal did not appear repeatedly despite summon issued by the Court and thereafter even bailable warrants were issued against PW ASI Roop Lal on 19.03.2021 and thereafter again fresh bailable warrants were issued against him on 08.04.2021. She further submitted that the material witnesses i.e the complainant namely Gurnek Singh and injured Mehtab Singh have since been examined. Therefore, the petitioner has filed the present bail application for the grant of bail.

She further submitted that the petitioner is in custody from 01.03.2019 which is more than three years and only three prosecution witnesses have been examined till date including the complainant, injured Mehtab Singh and police official. She further submitted that charges in the present case were framed on 09.09.2019 and now an application has been moved under Section 319 Cr.P.C which is evident from the orders passed by the trial Court on 31.01.2022 for filing of reply to the application. She further submitted that considering the long custody of more than three years and the fact that even for the purpose of examining the police officials, the Court had to issue bailable warrants twice and no further prosecution witness is coming forward and the delay of the trial is not at the end of the petitioner but at the end of the prosecution and, therefore, the petitioner may be considered for the grant of regular bail. She further submitted that although the petitioner was involved in some other cases as well but that cannot become a ground for denial of bail to the petitioner and he cannot be kept in custody for indefinite period when the trial is being delayed because of the fault of the prosecution itself.

Mr. K.S. Sidhu, learned Deputy Advocate General, Punjab has submitted that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that only three prosecution witnesses have been examined in the present case which include the material witnesses i.e. complainant and the injured. He further submitted that it is correct that now an application has been filed by the prosecution under Section 319 Cr.P.C for summoning of additional accused. However, he has opposed the grant of bail to the petitioner on the ground that the matter was serious in nature in which the role attributable to the petitioner was firing of shots from the fire arm and two injuries were there on the body of the injured.

Mr. Mohinder Kumar, Advocate has appeared on behalf of the complainant and he has opposed the grant of bail to the petitioner on the ground that it is a case where brother of the complainant was injured and the petitioner is a habitual offender and, therefore, the petitioner is not entitled for the grant of bail. He further submitted that two gun shot injuries were attributable to the petitioner and some of the independent eye witnesses are yet to be examined and the trial of the case was delayed because of Covid-19 pandemic.

I have heard the learned counsel for the parties.

The petitioner is in custody from 01.03.2019 which is more than three years. Some of the material witnesses i.e. complainant, injured Mehtab Singh and one ASI who is I.O have been examined as per the learned counsel for the parties. Although the petitioner had earlier filed a bail petition which was dismissed on 02.11.2020 but thereafter the official witness has been examined and now an application has been filed under

Section 319 Cr.P.C by the prosecution for summoning of an additional

accused. As per the facts of this case, the additional accused as per the learned counsel for the parties is Prabhjot Singh and in the facts of the case, the aforesaid Prabhjot Singh was actually a beneficiary of the dispute and the petitioner is only a cousin of aforesaid Prabhjot Singh and the aforesaid Prabhjot Singh was declared innocent by the police.

In view of the aforesaid circumstances, the second petition for bail filed by the petitioner would certainly be maintainable and especially in view of the fact that now the custody of the petitioner is more than three years. The official witness who is stated to be I.O has been summoned number of times by the Court for deposing but the Court had to issue bailable warrants against him twice and, therefore, it cannot be said that the delay was on the part of the petitioner.

This Court does not wish to go or enter into any merits of the present case but considering the aforesaid facts and circumstances and the custody of the petitioner, this Court deems it fit and proper to grant bail to the petitioner.

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.

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.

11.03.2022

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)**JUDGE**

: Yes/No
: Yes/No