

CRM-M-10511-2022 (O&M)

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

CRM-M-10511-2022.
Decided on : July 11, 2022.

Yadwinder Singh @ Yadu

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Judgepreet Singh Warring, Advocate,
for the petitioner.

Mr.J.P. Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

This is the second petition filed under Section 439 Cr.P.C.,
praying for the grant of regular bail to the petitioner in FIR No.68 dated
17.6.2018, under Sections 302, 34, 120-B IPC and Section 25, 27 of Arms
Act, registered at Police Station Phool, District Bathinda.

Learned counsel for the petitioner submits that the earlier
petition filed by the petitioner was dismissed as withdrawn on 25.11.2021
and the new ground is that vide order dated 10.12.2021 passed in CRM-M-

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34808-2021, co-accused of the petitioner namely Gurbax Singh was granted bail by passing the following order:-

“Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.68 dated 17.06.2018, for offence punishable under Sections 302, 34 of the Indian Penal Code (in short 'IPC') (Section 120-B IPC added later) and Sections 25/27 of the Arms Act, registered at Police Station Phool, District Bathinda.

Learned senior counsel for the petitioner has argued that as per the allegations in the FIR, registered at the instance of Megh Singh, on 17.06.2018 at about 11:00 AM, he along with his family members was present at his house when 02 unknown persons came there and demanded that they want eggs. Thereafter, the brother of the complainant namely Hardev Singh @ Gogi, accompanied those persons to the store and after some time, the complainant heard the noise of gun-shot from inside the store. The said unknown persons fired the shots at his brother and thereafter, they boarded the motorcycle and left the place of occurrence and in the said incident, Hardev Singh died at the spot.

Learned senior counsel for the petitioner has further submitted that later on, on 26.07.2018, Megh Singh has got his supplementary statement recorded that on enquiry, he came to know that the persons, who has killed his brother are Sukhdeep Singh and Amandeep Singh. It is also submitted that later on, on 12.08.2018,

another supplementary statement of the complainant was recorded that Yadwinder Singh @ Yadu, who was arrested by the Patiala Police had confessed that he and Amandeep Singh have committed the murder of Gogi by firing shots on his stomach and head and thereafter, Yadwinder Singh was also nominated as an accused. It is also submitted that the only evidence against the petitioner, at the first instance, was the 3rd supplementary statement dated 15.09.2018 wherein Megh Singh has stated that his brother Hardev Singh @ Gogi, was killed by Aman Kumar @ Amna, Yadwinder Singh @ Yadu, Jagtar Singh @ Tara and Sukhpreet Singh @ Budha in conspiracy with Gurbax Singh (petitioner herein). It is also argued that the allegations against the petitioner are that he hatched a criminal conspiracy to commit the murder of Hardev Singh @ Gogi.

Reply by way of affidavit of the Deputy Superintendent of Police, Sub-Division Phull, Bathinda, is on record and as per the reply, after stating the investigation and regarding the recording of the successive supplementary statement of Megh Singh, it is further stated that at the spot, 02 cartridges were recovered and from the co-accused, the recovery of the fire-arm was effected. It is also stated that after the arrest of the petitioner, he made a disclosure statement that since the complainant was informer of the police and was an instrument in the police encounter for which FIR No.83 dated 09.09.2016 under Section 307, 34 IPC and Sections 25/27/30 of the Arms Act, was registered at

Police Station Phul, District Bathinda and therefore, on that account, by nursing a grudge, the petitioner hatched a conspiracy in which the other accused have committed the murder of Hardev Singh.

Counsel for the State on the basis of the affidavit of the Deputy Superintendent of Police, Sub-Division Phul, District Bathinda, however, argued that the petitioner is involved in number of other FIRs as detailed in the said affidavit.

A perusal of the affidavit would show that the petitioner stands acquitted in 05 FIRs and is facing the trial in 10 other cases.

Learned senior counsel for the petitioner, in reply, has argued that now the statement of the complainant Megh Singh, has been recorded as PW1 in which he has stated that he has not witnessed any occurrence and unknown persons have committed the murder of his brother Hardev Singh.

This witness was declared hostile and was cross-examined by the Public Prosecutor. During the cross-examination, he even denied his statement Ex.PA made to the police and the subsequent statements Mark A, Mark B, Mark C, which were recorded on 19.06.2018, 26.07.2018 and 12.08.2018. This witness further denied the statement Mark D vide which the name of the petitioner surfaced for the first time on 15.10.2018. With reference to his statement Mark D, it is neither a fact nor he stated before the police that on enquiry and after going through the newspaper, he came to know that the petitioner has entered into a conspiracy with the

aforesaid other co-accused in order to commit the murder of his brother Hardev Singh.

Learned senior counsel for the petitioner has then, referred to the statement of PW-2 Gurkirat ingh, who also did not support the prosecution version and was declared hostile and even denied having made a statement except Mark E to the police. It is, thus, submitted that the only evidence against the petitioner is his own disclosure statement and it will be a matter of trial whether the disclosure statement is admissible against the petitioner in the absence of any corroborative evidence.

Learned senior counsel for the petitioner has lastly, argued that as on today, the petitioner is in custody for the last about 01 year, 04 months and 23 days and the petitioner is stated to be on bail in other cases where he is facing the trial as reflected in the Custody Certificate.

After hearing the counsel for the parties, without commenting anything on merits of the case, considering the fact that the only allegation against the petitioner is the 3rd supplementary statement of PW-1 Megh Singh from which he has already resiled while appearing as a witness before the trial Court or his own disclosure statement, which is yet to be proved with regard to the conspiracy and therefore, considering the custody of the petitioner, I deem it appropriate to grant him the concession of regular bail.

Accordingly, the present petition is allowed and the petitioner is directed to be released on bail subject to

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his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.”

Learned counsel for the petitioner submits that in view of the fact that both the eye witnesses i.e. PW.1 – complainant Megh Singh and PW-2 Gurkirat Singh, have not supported the prosecution version and also in view of the fact that petitioner is in custody for the last 3 years, 10 months and 24 days and the petitioner should also be granted the concession of regular bail.

The learned State counsel, as per custody certificate, has not disputed the factual position. However, it is submitted that the FSL report supports the prosecution version.

After hearing the learned counsel for the parties and considering the aforesaid fact and also in view of the fact that co-accused have been granted bail, the present petition is allowed. The petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

July 11, 2022.
raj arora

(ARVIND SINGH SANGWAN)
JUDGE

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