

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

208

**CRM-M-10992-2022
Decided on : 19.09.2022**

Tarsem Lal

. . . Petitioner(s)

Versus

State of Punjab

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Jasdeep Singh, Advocate
for the petitioner.

Mr. JS Arora, DAG, Punjab.

Mr. Rishu Garg, Advocate
for the complainant.

SANJAY VASHISTH, J. (Oral)

The instant second petition has been filed under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to the petitioner – Tarsem Lal, who has been booked for having committed the offences punishable under Sections 307, 506 of IPC and Section 27 of the Arms Act, in FIR No. 105, dated 03.09.2019, registered at Police Station Tapa Mandi, District Barnala, during the pendency of trial.

At the outset, learned State counsel has filed the custody certificate dated 16.09.2022, of the petitioner in Court today. Same is taken on record, subject to all just exceptions.

A copy thereof has been handed over to the learned opposite counsel.

Learned counsel for the petitioner contends that as per version of the FIR, petitioner and victim Karamjit Singh were well known to each other and were having the business of sale & purchase of cars. On the day of incident, both of them were sitting in Ahata and were consuming liquor. During

that time, there was exchange of hot words and petitioner fired bullet shots upon the victim Karamjit Singh.

Learned counsel for the petitioner refers to the order dated 06.01.2020, passed by the learned ASJ, Barnala, wherein, it is mentioned that injuries No.2 & 4, which were near the right shoulder of the complainant, were declared to be dangerous to life. He also argues that the injuries being on the right side of the chest means that there was no shot fired over the head or left side i.e. near to heart, therefore, presence of deep rooted intention to cause murder would be an arguable question before the learned trial Court.

Learned counsel for the petitioner further contends that as already reflecting in the version of the FIR, victim and petitioner both were having business of sale & purchase of cars, which shows that petitioner is not a hard core criminal in his past life. He further contends that petitioner has undergone more than 03 years of period in custody and trial is not likely to conclude in the near future. He further submits that two star witnesses i.e. complainant – Harinder Singh (PW-2) (brother of victim Karamjit Singh) and victim – Karamjit Singh (PW-1) both have been examined. In these circumstances, learned counsel for the petitioner contends that in case petitioner is released on bail, he is not in a position to influence or pressurize the witnesses, as material/statement of eye-witness account or the injured account, has already been deposed by both of the aforesaid witnesses. The remaining witnesses are either immaterial or official witnesses.

On the other hand, while vehemently opposing the prayer and submissions of learned counsel for the petitioner, learned State counsel submits that it is a case of serious nature, where, 3/4 shots were fired by the petitioner with his .32 bore pistol. Firing number of shots itself shows that deep rooted intention to cause murder was there. Further, on instructions from SI Renu, learned State counsel submits that out of total 19 prosecution witnesses, 06 have

been examined and rest of the witnesses is yet to be examined.

Learned counsel for the complainant also vehemently opposed the submissions made by learned counsel for the petitioner. He argues that it is a serious matter and the trial is running very fast and there is every likelihood of its conclusion in the near future, therefore, concession of bail should not be granted to the petitioner.

While considering the aspect of pace of the trial, this Court cannot look aside the report dated 05.08.2022, forwarded by learned ASJ, Barnala, in compliance to the order dated 20.05.2022, passed by the coordinate Bench of this Court, in the present petition. The relevant part of the aforesaid report reads as under:-

“3. That perusal of the file shows that the charge in case titled as State Vs. Tarsem Lal, bearing FIR No.105 dated 03.09.2019 u/s 307, 506 of IPC & Section 27/54/59 of Arms Act, P.S. Tapa was framed on 28.02.2020 and prosecution witnesses were ordered to be summoned for 25.03.2020, by the Ld. Predecessor of this Court in the present case.

4. That thereafter due to restrictive working of the court due to Covid19, the case was adjourned from time to time by the learned predecessor of this court from 23.03.202 to 28.10.2020.

5. That on 28.10.2020, 11.11.2020 and 03.12.2020 accused produced though VC and PW were ordered to be summoned for 18.12.2020 by the learned predecessor of this Court.

6. That on 18.12.2020 summons issued for the service of PWS namely Karamjeet Singh and Harinder Singh received back duly served but despite service but they did not turn up and they were ordered to be summoned throughailable warrants for the sum of Rs.3000/- each with one surety in the like amount for 15.01.2021, by the learned predecessor of this Court.

7. That on 15.01.2021, Sh. Munish Kumar Garg, Advocate had filed power of attorney on behalf of complainant. Exemption application of witness Karamjit Singh had been filed which was allowed for the reasons mentioned therein.ailable warrants sent to complainant Harinder Singh received back duly served despite

service but he did not turn up in the court and he was again ordered to be summoned through bailable warrants for the sum of Rs.3000/- with one surety in the like amount for 08.02.2021, by the learned predecessor of this Court.

8. *That on 08.02.2021, exemption application of complainant/PW Harinder Singh had been filed which was allowed for the reasons mentioned therein by the learned pre decessor of this court. No other PW was present on the said date and the PW's were again ordered to be summoned for 04.03.2021 by the learned predecessor of this Court.*

9. *That on 04.03.2021, examination in chief of victim Karamji Singh had been recorded and his cross examination was deferred on the request of learned counsel for accused who stated that he had engaged by the accused only one day prior and he has not gone through the contents of the brief and needs two weeks time to conduct the cross-examination. On request, cross-examination of that witness was deferred in the interest of justice by the learned pre decessor of this court and the said witness was bound down for 17.03.2021 by the learned predecessor of this Court.*

10. *That on 17.03.2021 Sh. JS Dhillon, Advocate had filed power of attorney on behalf of the accused. Summons sent to PW Karamjit Singh received back duly served. Whereas complainant Harinder Singh who was bound down for the date fixed but he could not examined on that day. The witnesses were ordered to be summoned through bailable warrants in the sum of Rs. 3,000/- with one surety in the like amount for 07.04.2021. Remaining Pws were also summoned for the date fixed by the learned predecessor of this Court.*

11. *That on 07.04.2021, bailable warrants sent to PW Karamjit Singh received back duly served despite service but he did not turn up and he was again ordered to be summoned through bailable warrants for the sum of Rs.3000/- with one surety in the like amount for 03.05.2021, by the learned predecessor of this Court.*

12. *That on 03.05.2021, in view of the order dated 28.04.2021 passed by Id. District & Sessions Judge, Barnala received in this court vide Endst. no. 1908/EB dated 28.04.2021 and in view of the direction passed by the Hon'ble Punjab and Haryana High Court the case stands adjourned to 08.06.2021 by the learned predecessor of this Court.*

13. *That similarly, on 07.06.2021 file taken up that day, in view of*

the order dated 31.05.2021 passed by ld. District & Sessions Judge, Barnala received in this court vide Endst. no. 2462/EB dated 31.05.2021 and in view of the direction passed by the Hon'ble Punjab and Haryana High Court the case stands adjourned to 19.07.2021.

14. That on 19.07.2021, no PW was present on the said date and the PW's were again ordered to be summoned for 18.08.2021 by the learned predecessor of this Court.

15. That on 18.08.2021, PW Karamjit Singh was present but could not be examined as regular counsel for the accused was not feeling well. This witness was bound down for that day. No other PW was served or present on the said date and the prosecution witnesses were again ordered to be summoned for 14.09.2021 by the learned predecessor of this Court.

16. That on 14.09.2021, summons sent to PW Harinder Singh received back duly served despite service but he did not turn up in the court and he was again ordered to be summoned through bailable warrants for the sum of Rs.3000/- with one surety in the like amount for 14.10.2021, by the learned predecessor of this Court.

17. That on 14.10.2021 and 08.11.2021, bailable warrants sent to PW Harinder Singh received back duly served despite service but he did not turn up in the court and he was again ordered to be summoned through bailable warrants for the sum of Rs.3000/- with one surety in the like amount for 29.11.2021, by the learned predecessor of this Court.

18. That on 29.11.2021, 17.12.2021, 07.01.2022, 21.01.2022, 11.02.2022, 04.03.2022, 25.03.2022 and 08.04.2022, no PW was served or present on the said date and the PW's were again ordered to be summoned for 22.04.2022 by the learned predecessor of this Court.

19. That on 22.04.2022, Pws namely Harinder Singh and Karamjit Singh received back duly served despite service but they did not turn up in the court and they are ordered to be summoned through bailable warrants for the sum of Rs.3000/- each with one surety in the like amount for 13.05.2022, by the learned predecessor of this Court.

20. That on 13.05.2022, when the file of the present case was first time put before the undersigned, no PW was served or present on the said date and the PW's were again ordered to be summoned for 14.07.2022. The long adjournment was granted due to the number of pendency of Session Trials, NDPS Trials and time bound cases in this

court and due to the intervening summer vacations.

21. That on 14.07.2022 summons sent to Pws namely Harinder Singh and Karamjit Singh received back duly served despite service but they did not turn up in the court and they are ordered to be summoned through bailable warrants for the sum of Rs.20,000/- each with one surety in the like amount for 05.08.2022.

22. That on 05.08.2022, PW1 Karamjit Singh eye witness and PW2 Harinder Singh injured/complainant were present and examined. No other PW was present or served on the said date. Now, the remaining un-examined prosecution witnesses were ordered to be summoned for 30.08.2022.

It is submitted that prosecution has cited 19 prosecution witnesses in the present case and as stated above out of which PW1 Karamjit Singh eye witness and PW2 Harinder Singh injured/complainant have already been examined and now 17 prosecution witnesses i.e. doctors, investigating officer and other official. witnesses including formal witnesses are left to be examined so for.

This is for your kind information and necessary action.

Submitted please.”

After considering the submissions of all the respective learned counsel for the parties, and perusing the record with their able assistance, and also by considering the report forwarded by learned ASJ, Barnala, I find that merits of the case are not required to be gone into /discussed, as same can prejudice the rights of either of the parties. In such a situation, only aspect for consideration is the longevity of the period of trial and the total custody period of the sole accused being more than 03 years.

A perusal of the custody certificate reveals that petitioner who is aged about 32 years, is not involved in any other criminal activity. Further, out of 19 prosecution witnesses, only 06 have been examined till date and it appears that reasonable time would be consumed by the trial Court in concluding trial in the present case. Therefore, petitioner cannot be kept inside jail for indefinite period and more particularly, for the reasons as reflected from the report dated

05.08.2022 (supra), forwarded by the trial Court.

Therefore, keeping in view the totality of circumstances and in view of the foregoing discussion, the present petition is allowed. Petitioner is ordered to be released on bail in this case, subject to his furnishing bail/surety bonds to the satisfaction of the learned Trial Court/ Chief Judicial Magistrate/ Illaqa Magistrate/ Duty Magistrate concerned, if not required in any other case.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation made here-in-above shall not be construed as an expression on the merits of the case and the Trial Court shall decide the case on the basis of evidence available on record.

Besides above, it is also made clear that in future if petitioner makes any attempt to threaten or intimidate the victim Karamjit Singh or the complainant Harinder Singh or any other family member of the complainant side, and some substantial reason is available, it would be open for the State or the complainant to seek cancellation of bail granted to the petitioner.

Petition stands disposed of.

(SANJAY VASHISTH)
JUDGE

September 19, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*