

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(212)

CRM-M-17634-2022

Date of decision: - 30.11.2022

Gurjit Singh @ Jhaau

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Jagraj Singh Khiva, Advocate, for the petitioner.

Mr. Iqbal S. Mann, DAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is a second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.200 dated 24.11.2019, registered under Sections 302 and 34 IPC, at Police Station City-1, Mansa, District Mansa.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 24.11.2019 and the investigation is complete and the challan has been presented and there are 23 prosecution witnesses, out of which, 6 have been examined and thus, the conclusion of trial is likely to take time. It is submitted that in the present case, there is no eye witness and although, the complainant Surat Singh had named the present petitioner along with two other persons, but he is also not an eye witness of the occurrence. It is also submitted that the petitioner had earlier filed a petition for regular bail, which was dismissed on

12.11.2020 by a Co-ordinate Bench of this Court, in which, it had been stated that the petitioner had made an extra judicial confession before Maghar Singh in addition to other factors. It is stated that after the passing of the said order, a period of more than 2 years has elapsed and even the said Maghar Singh has been examined as PW-5 and he has not supported the case of the prosecution and rather, has stated that no person had come to him to disclose about the facts of the present case.

Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court passed in case titled as **Parvinder Singh Vs. State of Punjab**, reported as **2003(12) SCC 615**, in support of his argument with regard to maintainability of the second regular bail application after the dismissal of the first. He has further relied upon the judgment passed by the Rajasthan High Court (Jaipur Bench) (Full Bench) in case titled as **Ganesh Raj Vs. State of Rajasthan and others** reported as **2005(3) RCR (Criminal) 30**, to contend that the speedy trial is a constitutional right of the accused provided to him under Article 21 of the Constitution of India and in case, the first regular bail application is dismissed on merits and trial is being delayed then, the petitioner would have the right to file a second bail application on account of delayed trial.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the petitioner had been named in the FIR and also one Sarabjeet Singh, had seen the deceased going with the present petitioner and other co-accused and thus, there is last seen evidence against the present petitioner and has thus

prayed that the present petition be dismissed.

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

The Hon'ble Supreme Court in ***Parvinder Singh's case*** (Supra) has held as under:-

“2. In Criminal Appeal No.57-DB of 2001 an application for grant of bail was filed by the appellant being Criminal Miscellaneous No. 53713 of 2002. The bail application has not been examined on merits and has been dismissed holding that it is not maintainable, as against an earlier order of the High Court rejecting bail, a special leave petition was filed before this Court which was dismissed as withdrawn. The second ground stated in the impugned order is that the bail application has been rejected on three earlier occasions. The fact that earlier bail application was rejected and the special leave petition was dismissed as withdrawn would not make the fresh bail application legally not maintainable. The High Court can always consider fresh circumstances and subsequent events. The same would be the position regarding the earlier rejections. In this view, we are unable to sustain the impugned order dated 7th January, 2003. The bail application (Criminal Miscellaneous No. 53713 of 2002) shall be decided afresh on merits. We request the High Court to decide the application before the close of the court for winter vacation.

3. The appeal is disposed of accordingly.”

A perusal of the above judgment would show that it was observed by the Hon'ble Supreme Court that even in case, the earlier bail application of the accused was rejected and the SLP against the same was dismissed as withdrawn, the same would not make the fresh bail application legally not maintainable and the Hon'ble Court can consider the subsequent bail application after taking into account fresh circumstances and subsequent events.

Hon'ble Full Bench of Rajasthan High Court in ***Ganesh***

Raj's case (Supra) has held as under:-

“Speedy trial is a Constitutional right of the accused provided to him by Article 21 of the Constitution. If first application of the accused who is in custody is dismissed on merits and the trial is delayed, the accused has a right to make second bail application on the ground of delayed trial Section 439 to Constitutional right of the accused whereas Section 438 his statutory right. The provisions of Section 438 should not be put to abuse at the instance of unscrupulous accused.”

A perusal of above judgment would show that it has been observed that speedy trial is a constitutional right of the accused provided to him under Article 21 of the Constitution of India and in case, the accused is in custody and his first bail application was dismissed on merits and the trial is being delayed, then, the accused has a right to file a second bail application on the ground of delayed trial. It was further observed that Section 439 relates to the constitutional right of the accused.

The petitioner has been in custody since 24.11.2019 and the investigation is complete and the challan has been presented and there are 23 prosecution witnesses, out of which, 6 have been examined and thus, the conclusion of the trial is likely to take time. There is no eye witness in the present case and the case is based on circumstantial evidence and the petitioner had earlier filed a petition for regular bail which was dismissed by a Co-ordinate Bench of this Court, vide order dated 12.11.2020 in which one of the factors which was noticed was that the petitioner had made an extra judicial confession before Maghar Singh. The said Maghar Singh has been examined as PW-5 on 30.05.2022 and has not supported the case of the prosecution and had specifically stated in his examination-

in-chief that no individual or individuals ever came to him to disclose about the facts of the case at any point of time and a period of one year has elapsed from the passing of the order dated 12.11.2020 and thus, the law laid in the abovesaid judgments entitle the petitioner to file the present second petition for regular bail. The question, as to whether the chain of circumstances in the present case is complete so as to convict the present petitioner, would be finally adjudicated during the course of the trial.

Keeping in view the above said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case.

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.

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.

November 30, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes