

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(215)

CRM-M-18005-2022

Date of decision: - 06.05.2022

Dhruv Mohan Garg

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Anmol Partap Singh Mann, Advocate,
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail in FIR No.133 dated 26.04.2020, registered under Sections 186, 188, 332, 353, 307 and 34 IPC and Section 25 of the Arms Act, 1959 (Section 216 IPC added later on), at Police Station Chandimandir, District Panchkula.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has been in custody since 26.04.2020 and there are 32 witnesses, none of whom have been examined and thus, the trial is likely to take time. It is further submitted that in the present case, one injury has been attributed to the petitioner, which although, was initially declared as grievous as per the MLR report dated 26.04.2022 (Anenxure P-2), but subsequently, as per the certificate submitted by the

Government Medical College and Hospital, Sector 32, Chandigarh, dated 23.06.2022, the same was stated to be simple in nature. It is further submitted that as per the prosecution version, two country made pistols (Chambered for 7.65 mm cartridges) had been recovered from the present petitioner and from co-accused Harsimran Singh @ Simmu and two empty cartridges cases were also recovered and as per the FSL report (Annexure P-4), it has been stated that the same have been fired from country made pistol marked W/2 and it is thus argued that both the said fire shots have been shot from one pistol, whereas, as per the allegations in the FIR, two separate pistols were used in the alleged offence. It is submitted that although in the FIR, it has been stated that it is the present petitioner, who had fired at the Head Constable Raspreet Singh, who had been injured and the co-accused Harsimran Singh @ Simmu had fired on Inspector Rajnish Kumar, which shot missed him, but the said version stands diluted on account of the abovesaid FSL report as per which both the shots had been fired from the same pistol. It is further submitted that co-accused of the petitioner, namely, Harsimran Singh @ Simmu has already been granted the concession of regular bail, vide order dated 16.12.2021, passed in CRM-M-25926-2021 by a Co-ordinate Bench of this Court, on account of the fact that the investigating officers were not able to show as to from whom the pistol Marked W/2 had been recovered. It is also submitted that the petitioner has already been granted bail vide order dated 11.01.2022 in FIR No.28 dated 11.03.2020, registered at Police Station Phase-8, Mohali, with respect to which, the police had come to arrest the petitioner. It is also submitted that the petitioner has

some problem in his lower back, on account of which he is unable to walk properly and in this regard a reference has been made to the order dated 26.7.2021, vide which the petitioner has been granted interim bail; as well as the report of the medical officer, Central Jail, Ambala Cantt. (Anenxure P-9). It is further submitted that the custody of the present petitioner is five months more than the custody the co-accused Harsimran Singh @ Simmu had undergone at the time of being granted the concession of regular bail by a Co-ordinate Bench of this Court. Learned counsel for the petitioner has further submitted that other than the present case and the above-said FIR No.28 dated 11.03.2020, the petitioner is not involved in any other case.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that as per the FIR, it was the present petitioner who had fired, on account of which an injury was caused to Head Constable Raspreet Singh on his leg. It is further submitted that the petitioner and other co-accused have the intention of evading the police, however, the factual aspects have not been disputed by learned State counsel.

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

Petitioner is stated to be in custody since 26.04.2020 and there are 32 prosecution witnesses, none of whom have been examined. Further, the said witnesses are official witnesses and thus, the question of influencing them does not arise. Although, as per the FIR, the petitioner has been attributed only one injury suffered by Head Constable Raspreet

Singh, which although, initially was shown to be a grievous injury, but ultimately, as per the certificate issued by the Government Medical College and Hospital, Sector 32, Chandigarh, the same has been stated to be a simple injury. In the present case, as per the FIR, there were two accused i.e. the petitioner and Harsimran Singh @ Simmu, who were armed with country made pistols (Chambered for 7.65mm cartridges) and from their respective pistols, they were alleged of having fired at the police officials. Two country made pistols as well as the empty cartridges were sent for FSL examination and as per the FSL report dated 10.06.2020, it has been found that both the cartridges cases Marked C/1 and C/2 had been fired from the same country made pistol Marked as W/2. The relevant part of the said FSL report is as under: -

"Result

- 1. Country made pistols marked W/1 & W/2 (each chambered for 7.65mm cartridges) are framed as defined in Arms Act 54 of 1959. Their firing mechanisms were found in working order.*
- 2. 7.65mm fired cartridges cases marked C/1 & C/2 have been fired from Country made pistol marked W/2 (Chambered for 7.65mm cartridges) and not from any other firearm even of same make and bore/caliber because every firearm has got its own individual characteristic marks.*
- 3. Holes on the cloth (pajama) have been caused by a bullet projectile."*

From the above, it comes forth that both the fire shots were made from the same firearm and the same is not in consonance with the allegations made in the FIR. The co-accused of the petitioner, namely, Harsimran Singh @ Simmu has already been granted the concession of regular bail, vide order dated 16.12.2021, passed in CRM-M-25926-2021

by a Co-ordinate Bench of this Court. The relevant part of the said order is as under: -

3. *It, therefore, boils down to a situation that actually only one firearm was used for firing at the victim/Police Party although recovery was effected of two different countrymade pistols (Chambered for 7.65mm cartridges). One of the pistols was allegedly recovered from the present Petitioner, and the other one from co-accused Dhruv Mohan Garg.*

4. *In answer to a pointed query of the Court, Ld. State Counsel however, inspite of having the assistance of two Investigating Officers of the case namely ASI Rajbir Singh and ASI Ram Mehar, who are present in the Court, has been unable to show that the pistol Mark W/2 was the same that was recovered from the present Petitioner, and not otherwise.*

5. *Consequently, the doubt of the Court as to whether the gunshot/cartridge fired at the Complainant actually matched the weapon allegedly seized from the Petitioner, has not been cleared.*

6. *The Complainant undoubtedly happens to be a Police Officer, and therefore can be presumed to be not vulnerable to any kind of threat or pressure at the instance of an alleged criminal, on bail. No actual injury was suffered by him in the occurrence.*

7. *In the circumstances, considering the long detention undergone by the Petitioner following his arrest on 26th April, 2020 and the fact that trial in the case is still to commence, as even the Charges have not yet been framed, the Court is of the opinion that further detention of the Petitioner for an indefinite period at this stage is not called for. As such, he is ordered to be released on bail to the satisfaction of the Ld. Trial Court/Duty Magistrate concerned.*

8. *Disposed off.*

December 16, 2021

**(SUDIP AHLUWALIA)
JUDGE"**

Perusal of the above-order would show that the investigating officers, who were present in the Court, were unable to show as to from whom the pistol Marked as W-2 had been recovered i.e. whether from the

present petitioner or from co-accused Harsimran Singh @ Simmu and accordingly, the said co-accused was granted the benefit of regular bail. The custody of the present petitioner is five months more than the custody undergone by the said co-accused Harsimran Singh @ Simmu at the time when he was granted the said concession. The present petitioner has been stated to have been granted regular bail in FIR No.28 dated 11.03.2020, vide order dated 11.01.2022 and it is with respect to the said case, that the police had gone to arrest the petitioner. Moreover, the petitioner has a problem in his lower back on account of which he is unable to walk properly and it is on the basis of the said aspect that he was granted interim bail vide order dated 26.07.2021, but however, the petitioner could not take the benefit of the same. The medical report submitted by the Medical Officer, Central Jail (Ambala), also reaffirmed the said fact. The relevant part of the said report is as under: -

"The patient was further prescribed medicines for 14 days and was advised to avoid strenuous work (copy Enclosed). The patient was further again referred to follow up to GMCH-32 Chandigarh on dated 23.06.2021 to department of orthopedics, where the patient was admitted by the doctors on duty under unit 1 professor Rohit Jindal and was discharged on dated 01.07.2021. The patient was diagnosed with PIVD L4, L5-S1 level with neurological deficits, NCV bilateral lower limbs: normal Eps report. That further the patient was planned for Decompression surgery and managed with analgesics. That further it was mentioned by Doctors on duty that the patient's relatives have refused for surgical management and further treatment at GMCH-32 Chandigarh, the patient is being discharged on Request. However the patient was prescribed medicines and was advised to continue physiotherapy as advised, further advised to keep knee in flexion when lying down. (Copy Enclosed). That at present the patient is kept in H-1 ward of jail hospital, as the patient is unable to work without support and is confined to wheel chair and is on bed rest. All the aforesaid

information based on availability of Medical Treatment. Record is said prisoner patient.

*sd/-
Medical Officer
Central Jail (Ambala)
Ambala Cantt."*

Keeping in view the abovesaid 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.

May 06, 2022
naresh.k

**(VIKAS BAHL)
JUDGE**

Whether reasoned/speaking?	Yes
Whether reportable?	Yes