

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-21936-2021(O&M)
Date of decision : 09.11.2022

Janak Lal

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Veneet Sharma, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, Sr.DAG, Punjab.

Mr.R.S.Bains, Senior Advocate with
Mr.Amar Jeet, Advocate
for the complainant.

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.63 dated 27.03.2020 registered under Sections 302, 201, 336, 34, 120-B, 307, 323, 148, 149 IPC and Sections 25, 27, 29 of the Arms Act at Police Station Chheharta, District Amritsar.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 29.03.2020 and the investigation is complete and the challan has already been presented and there are 29 witnesses, out of which only one witness has been examined and thus, the trial is likely to take time. It is further submitted that as per the prosecution case, no injury has been attributed to the present petitioner and the deceased Davinder Singh had suffered one gun shot injury on account of which he

died and the said injury has been attributed to Rubinder Singh. It is further

submitted that the petitioner was stated to be armed with *datar* and recovery has already been effected from the present petitioner.

Learned State counsel and learned senior counsel for the complainant, on the other hand, have opposed the present petition for regular bail and have submitted that the petitioner was also accompanying the main accused Rubinder Singh and other accused persons in the incident during which Rubinder Singh had fired at the deceased Davinder Singh, who had thus, died. It is submitted that a perusal of FIR would show that there were two incidents which had taken place and in the earlier incident, a lady was also beaten up. It is further pointed out that the petitioner is involved in one more case i.e., FIR no.166 dated 18.05.2022 under Sections 387, 506 IPC at Police Station Maqboolpura. Learned senior counsel for the complainant has also stated that one more FIR no.95 has been registered by Kuldip Singh, who is the father of the deceased, on the allegations that certain persons had come and fired bullets outside the house of the complainant party.

Learned counsel for the petitioner, in rebuttal, has submitted that as far as FIR no.95 dated 05.05.2022 is concerned, the petitioner has not been named as accused and the said incident / act could not have been attributed to the petitioner inasmuch as the petitioner was in custody at that time. It is further submitted that the petitioner is ready to give an undertaking within a period of three weeks from today before the trial Court to the effect that he would not go within the radius of 500 meters of the house of the complainant. He has pointed out that as far as the first incident is concerned, even as per the FIR, the petitioner was not present at the spot and the presence of the petitioner has only been alleged in the second

incident. He has relied upon the judgment of Hon'ble Supreme Court in ***“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”***, reported as ***2012 (2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

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

It is not in dispute that the petitioner was not present at the time of the first incident but was present at the time of the second incident, however, no injury has been attributed to the present petitioner and the deceased Davinder Singh had died on account of the gun shot injury which has been attributed to the co-accused Rubinder Singh and it is from the said Rubinder Singh that one pistol of .32 bore has been recovered. The petitioner has been in custody since 29.03.2020 (2 years 7 months and 12 days) and there are 29 witnesses and out of which only one witness has been examined and thus, the trial is likely to take time. The petitioner is not an accused in FIR no.95 dated 05.05.2022.

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 and subject to the condition that the petitioner would submit an undertaking before the trial Court within a period of 2 weeks from today that the petitioner would not go within the radius of 500 meters of the house of the complainant.

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 and the complainant 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.

Pending miscellaneous application stands disposed of in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

November 09, 2022
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No