

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-26511-2021(O&M)
Date of decision : 17.10.2022

Jatinder Kumar @ Akshay

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Deepak Sabharwal, Advocate
for the petitioner.

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

Mr. G.S.Jagpal, Advocate
for the complainant.

VIKAS BAHL, J.(ORAL)

This is a petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.352 dated 28.10.2020 registered under Sections 302, 323, 324, 148, 149, 120-B IPC at Police Station Beas, District Amritsar.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 06.11.2020 and the investigation is complete and the challan has already been presented and there are 26 witnesses and out of which, none have been examined and thus, the trial is likely to take time. It is submitted that on 18.01.2022 an application under Section 319 Cr.P.C. to summon the additional accused has been filed and thus, the trial is likely to be delayed further. It is further submitted that the

petitioner is not involved in any other case. It is stated that in the present case the petitioner is suffering from unsoundness of mind and thus, in view of Section 84 IPC, the petitioner cannot be convicted of the present offences even in case the offences are proved against him. In support of his argument, learned counsel for the petitioner has relied upon Annexure R-1/T (page 35 of the paper book) which has been annexed along with the reply dated 15.02.2022 filed by the State in which it has been recorded by the Medical Officer, Central Jail, Amritsar that the petitioner has been diagnosed as a case of Schizophrenia by the Board of Doctors, Department of Psychiatry, Guru Nanak Dev Hospital, Amritsar. It is further submitted that even a perusal of proceedings dated 29.01.2021 of the Mental Health Review Board, Gurdaspur (Annexure P-3) as well as report dated 29.01.2021 (Annexure P-4) would prima facie show that the petitioner is a person of unsound mind and thus, he is covered by Section 84 IPC. It is stated that even earlier in time, the petitioner was residing in America and he was suffering from the said problem and reference has been made to the certificate dated 02.12.2020 in the said regard. Learned counsel for the petitioner has pointed out that although, in the FIR specific allegations have been levelled against Vishal, Rohit and Amit Sharma but after detailed enquiry, it has been found that the said three persons were not present at the spot and it is thus, submitted that the version given in the FIR was not factually correct.

Learned State counsel and learned counsel for the complainant, on the other hand, have opposed the present petition for regular bail and have submitted that it is the present petitioner who is the main accused in the present case inasmuch as it was the present petitioner, against whom it

had been alleged in the FIR, that he had carried a brick and had inflicted brick injuries upon Rekha Rani deceased. It is further submitted that the aforementioned proceedings and the report are of date 29.01.2021, whereas the report of PGI dated 29.04.2022 would show that it has been stated by the Medical Board that it is not possible to ascertain if the examinee (petitioner) is suffering from any Psychotic illness. It is further submitted that the said plea of unsoundness of mind has only been taken so as to be acquitted in the case.

Learned counsel for the petitioner, in rebuttal, has submitted that the report of the PGI does not say that the petitioner is not suffering from Schizophrenia or is not of an unsound mind and rather it has been stated that on account of lack of proper information, the said Medical Board is of the considered opinion that currently it is not possible to ascertain if the examinee (petitioner) is suffering from any Psychotic illness or not.

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

The petitioner has been in custody since 06.11.2020 and the investigation is complete and the challan has already been presented and there are 26 witnesses and out of which, none have been examined and thus, the trial is likely to take time. It is not in dispute that an application under Section 319 Cr.P.C. to summon the additional accused has been filed on 18.01.2022 and the same has not been decided as yet and thus, the trial is likely to be delayed further in view of the same. The petitioner is stated to be not involved in any other case. Learned counsel for the petitioner has raised the plea of unsoundness of mind and has referred to Section 84 IPC.

It would be relevant to refer to Section 84 IPC and the same is reproduced

hereinbelow:-

“84. Act of a person of unsound mind.—Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.”

A perusal of the above section would show that it has been stipulated therein that nothing is an offence which is done by a person who, at the time of doing the same, by reason of unsoundness of mind, is incapable of knowing the nature of the act. The relevant part of the report dated 07.07.2022 (Annexure R-1/T) issued by the Medical Officer, Central Jail, Amritsar to the Superintendent, Central Jail, Amritsar, is reproduced hereinbelow:-

“Subject: Regarding Medical status report of Jatinder Kumar s/o Harjinder Kumar.

As per record available patient Jatinder Kumar s/o Harjinder Singh Kumar was diagnosed as case of Schizophrenia by Board of Doctors, Deptt. Of Psychiatry, Guru Nanak Dev Hospital, Amritsar. Pt. Is on prescribed medicine and currently admitted in Jail Hospital, Amritsar. Pt. is stable (vitals) and will be referred to Deptt. of Psychiatry for further follow at GNDH Amritsar.

This is for your information.

*Sd/- Medical Officer
Central Jail, Amritsar.”*

A perusal of the above would show that it has been certified by the Medical Officer, Central Jail, Amritsar that as per the record available, the petitioner was diagnosed as a patient of Schizophrenia by the Board of Doctors, Department of Psychiatry, Guru Nanak Dev Hospital, Amritsar and the petitioner is on prescribed medicine. Even a perusal of the proceedings of Meeting of Mental Health Review Board, Gurdaspur (Annexure P-3) held on 29.01.2021 would show that the Members of the Committee had

Gurdaspur on 29.01.2021 at 10:30 AM in the presence of Dr. Chetana, SMO, Gurdaspur and Dr. Gurpreet Gill, Medical Officer as well as the police officials and had also gathered information from other jail inmates who were admitted in the same ward for medical treatment and had found that the petitioner was not of sound mind and that he remained on bed and it was noted that the said observation given by the committee corroborates with the medical notes given by Dr. Varinder Mohan, Psychiatrist, Civil Hospital, Gurdaspur and the noting of two Assistant Professor, Department of Psychiatry, Government Medical College, Amritsar who had opined that the patient needs long term treatment for which he can be shifted to Government Institute of Mental Health, Amritsar. The said proceedings had been signed by the District and Sessions Judge, Gurdaspur, who is Ex-officio Chairman Mental Health Review Board as well as by the Additional Deputy Commissioner, Gurdaspur, Deputy Medical Commissioner, Gurdaspur and Psychiatrist Incharge, Civil Hospital, Gurdaspur. Even the report dated 29.01.2021 (Annexure P-4) supports the said observations. Although the report of Medical Board which was constituted by the competent authority of PGI dated 29.04.2022 had stated that on account of lack of informants/information, the Board was of the considered opinion that currently it was not possible to ascertain if the examinee was suffering from any Psychotic illness but in view of the entire medical record, the argument of learned counsel for the petitioner to the effect that the petitioner is suffering from unsoundness of mind, cannot be outrightly rejected. The said aspect as to whether the petitioner is of unsound mind so as to determine if he is covered by Section 84 IPC, would be finally adjudicated during the course of trial. A perusal of FIR would show that

specific allegations had been levelled against co-accused Vishal, Rohit and Amit Sharma but the said persons, as per investigation, have been found to be innocent, thus, although the petitioner is the main accused as per the FIR, but keeping in view the above said facts and circumstances and also keeping in view the custody period of the petitioner, 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.

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

(VIKAS BAHL)
JUDGE

October 17, 2022

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No