

211

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

**CRM-M-28049-2021
Date of Decision: 06.05.2022**

Suman Shah Bhaiya

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Munish Raj Chaudhary, Advocate,
for the petitioner.

Mr. R.S. Thind, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.1 dated 01.01.2019, under Section 302 of the IPC, registered at Police Station Machiwara Sahib, District Ludhiana.

It has been submitted by learned counsel for the petitioner that the petitioner is in custody since 07.01.2019, which is approximately 3½ years. He further submitted that in the present case, the petitioner was not named in the FIR and it was only after two days that on the basis of a supplementary statement made by the complainant that his name was nominated. He also submitted that the nomination of the petitioner was made on the basis of last seen theory and also thereafter, allegedly there was

an extrajudicial confession made to one Gamdur Singh. He further submitted that the petitioner had nothing to do with the present offence and the entire case was based upon the circumstantial evidence. He also submitted that be that as it may, the charges in the present case were framed on 04.06.2019, and thereafter, for a number of times the matter was adjourned and repeatedly bailable warrants were issued to the complainant-Gurdeep Singh and the other witness Jaspal Singh which according to the learned counsel for the petitioner were issued for 22 times but they failed to appear and depose before the trial Court.

Learned counsel for the petitioner further submitted that on the one hand the entire case is based upon the circumstantial evidence and on the other hand the complainant and other witnesses have failed to appear before the Court despite issuance of bailable warrants for about 22 times with the result that the petitioner has faced incarceration for 3½ years. He also submitted that the petitioner is not involved in any other case and has been falsely implicated in the present case and as of now only three witnesses have been examined, who are only official witnesses and no private witness has been examined, therefore, he prayed that the petitioner may be considered for the grant of regular bail.

On the other hand, Mr. R.S. Thind, learned Deputy Advocate General, Punjab has submitted that it is correct that the petitioner is in custody since 07.01.2019 and only three official witnesses have been examined and no private witness including the complainant has been examined. He further submitted that it is also correct that the petitioner is not involved in any other case.

I have heard the learned counsel for the parties.

It is a case where the entire case of prosecution is based upon the circumstantial evidence on the basis of last seen theory and extrajudicial confession to one Gamdur Singh. However, as pointed out by the learned counsel for the parties that the complainant and the private witnesses were repeatedly summoned by the trial Court but they failed to appear and as much as 22 times bailable warrants were issued against the complainant and the other witnesses and still they have failed to appear. The petitioner is not involved in any other case as per the learned counsel for the parties. The petitioner has faced incarceration for approximately 3½ years and therefore, his further detention would not be justifiable in view of aforesaid facts and circumstances.

In view of the above, the present petition is allowed and the petitioner is ordered to be released on bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

06.05.2022

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |