

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-28510-2021

Date of decision : 07.02.2022

Saroop Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr. Vinod Ghai, Senior Advocate with
Ms.Kanika Ahuja, Advocate and
Mr.Edward Augustine George, Advocate
for the petitioner.

Mr.Karanbir Singh, AAG, Punjab.

Mr.Ankit Bishnoi, Advocate
for the complainant.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

This is a second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner pending trial in FIR no.168 dated 01.08.2020 registered under Section 302 IPC and Sections 25 & 27 of the Arms Act, 1959 (Section 120-B IPC added later on) at Police Station Lopoke, District Amritsar Rural, Punjab.

The FIR in the present case has been registered on the statement of one Janga Singh, who had stated that he has two sons and one daughter and on 31.07.2020 his son Gurbir Singh and his friend Amandeep Singh had gone for running and at about 09:30 PM, Amandeep Singh and his son Gurbir Singh were talking to each other when the complainant and

Mehal Singh, relative of the complainant, saw the present petitioner holding a revolver in his hand and saying that he would teach a lesson to the complainant's son for standing on road and suddenly fired at his son and on account of said injury, the son of the complainant had died.

Learned senior counsel for the petitioner has very vehemently argued that in the present case, the petitioner has been falsely implicated. It is submitted that although as per the FIR, Janga Singh complainant, Amandeep Singh and Mehal Singh, who are stated to be very close to the family of the complainant Janga Singh and were stated to be present at the alleged spot at 09:30 PM, i.e. late in the evening but yet, a perusal of the outdoor ticket Annexure P-2 as well as inquest report Annexure P-3 would show that the said three persons were neither the persons who had taken the deceased to the hospital, nor the persons who had identified the body of the deceased. In fact as per the inquest report, it was one Malkit Singh and one Navpreet Singh, who as per the version of the FIR were not even present at the spot, who had identified the body of the deceased. Further reference has been made to the statements of said two persons Navpreet Singh and Malkit Singh (Annexures P-4 and P-5, respectively), which had been recorded under Section 175 Cr.P.C. as per which, none of the persons who had been stated to be witnesses in the FIR, were stated to be present at the spot of alleged incident. It has further been submitted that the complainant had, in fact, made a statement on 07.08.2020 to the effect that the statement recorded by the complainant on 01.08.2020 was recorded while the complainant was in a state of shock on account of his son's death and had further alleged that Harjinder Singh and Sukhwinder Singh, sons of Karnail Singh, were also involved in the conspiracy and it was the said two persons

who had instigated the petitioner to fire a shot at the son of the complainant. Learned senior counsel for the petitioner has thus argued that the version given by the complainant had been diluted by the complainant himself, only 6 days after the registration of the present FIR. It has also been argued that even the version given in the FIR does not seem to be correct inasmuch as it is highly unlikely that Janga Singh and his relative Mehal Singh would be standing outside at 9:30 PM and would be able to accurately identify the present petitioner. It has further been submitted that said eye witnesses have apparently been introduced in the present case as they are the admittedly close to the family of the complainant. It has further been stated that the incident had allegedly taken place close to the house of the petitioner and the presence of the deceased at the spot thus, becomes doubtful. It has also been stated that the motive which has been attributed to the petitioner in the present FIR, to the effect that the family of the complainant has come out of the poverty by working hard and the petitioner wanted to have an influence over them in the village also, does not seem to be an adequate motive for any person to kill another person. Learned senior counsel for the petitioner has also submitted that this Court had on 28.09.2021 observed that every endeavour would be made by the trial Court as well as State to examine the alleged eye witnesses and subsequently, even on 11.11.2021, the statement of counsel for the State as well as complainant was recorded to the same effect that every endeavour would be made on the next date of hearing and even thereafter on 21.12.2021, an order was passed by this Court, and the report of the trial Court with regard to progress of the case, was ordered to be submitted. It has thus, been submitted that perusal of the said orders as well as report of the trial Court would show that the trial is not moving

forward and in fact only one witness has been partially examined and further, a statement had also been made by the State counsel that an application under Section 319 Cr.P.C. would be filed for summoning the other accused and the petitioner, who has been in custody since 03.08.2020, is suffering irreparable loss and the trial is not likely to conclude in the near future inasmuch as there are 19 prosecution witnesses and the matter has now been adjourned to 14.03.2022, awaiting the status report from the SHO concerned regarding accused Sukhwinder Singh and Harjinder Singh. Learned senior counsel for the petitioner has further submitted that by keeping the petitioner in further incarceration would be convicting the petitioner before the trial. It has also been submitted that the petitioner is not involved in any other case and in fact, it was the complainant who was involved in other cases including a case of rape and thus he had enmity in the village.

Learned State counsel as well as counsel for the complainant have opposed the present petition for regular bail. It has been submitted that the person mentioned in the inquest report, i.e. Navpreet Singh in fact is the son of Mehal Singh and the said Mehal Singh is an eye witness in the present case. It has thus been submitted that Navpreet Singh cannot be stated to be a person who had no knowledge of the present case. It has further been submitted that every endeavour would be made by the complainant and the State to move an application under Section 319 Cr.P.C. as expeditiously as possible. It has further been submitted by learned counsel for the complainant that every endeavour has been made by the complainant to persuade the State to proceed against co-accused Sukhwinder Singh and Harjinder Singh but it is the police authorities who

have delayed the matter and the complainant is not at fault for the same.

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

This Court on 28.09.2021 had passed the following order:-

“Custody certificate filed by the learned State counsel is taken on record.

Learned State counsel has submitted that two eye-witnesses and one official witness have been summoned by the trial Court for 28.10.2021 and has further submitted that every endeavour would be made to examine the said witnesses and the complainant as soon as possible.

Adjourned to 11.11.2021.”

Again on 11.11.2021, the following order was passed:-

“Custody certificate filed by the learned State counsel is taken on record.

In spite of the last order passed by this Court dated 28.09.2021, it has been argued by the learned Senior counsel for the petitioner, that neither the two eye-witnesses nor the official witness have been examined and it has been stated in the zimini order that the said witnesses were not served. It has been submitted that in fact, the State counsel and the counsel for the complainant were present on the last date of hearing and, thus, effort should have been made to examine the said witnesses.

It is submitted that now the case is fixed for 13.12.2021 and fresh summons have been issued for their evidence.

Learned counsel for the State as well as for the complainant assure this Court that on the next date, the summoned witnesses would be presented before the Court and every endeavour would be made to examine

them.

Adjourned to 21.12.2021.”

On 21.12.201 the following order was passed:-

“Learned Senior Counsel for the petitioner has pointed out that in spite of the last two orders, the trial of the case has not made much progress and in fact, vide order dated 13.12.2021, it had been noticed that after the recording of statement of one witness PW-Janga Singh in part, who is complainant in the case, the prosecution had sought time to file an application under Section 319 of Cr.P.C. for summoning the other accused persons.

Learned Senior Counsel for the petitioner has submitted that on account of filing an application under Section 319 of Cr.P.C., the trial will be further delayed. It is stated that matter is now stated to be listed on 19.01.2022.

Adjourned to 03.02.2022.

Report of the trial Court with respect to the progress of the case be submitted by the next date of hearing.”

In pursuance of the orders reproduced hereinabove, the Additional District and Sessions Judge, Amritsar, had submitted its report.

The relevant portion of the said report is reproduced hereinbelow:-

“With reference to the order dated 21.12.2021 passed by Hon'ble Punjab and Haryana High Court, Chandigarh, in CRM-M- 28510-2021 titled as “Saroop Singh Versus State of Punjab” it is humbly submitted that challan in this case was presented against accused Saroop Singh and after commitment of the case, same was received by entrustment in this court on 15.2.2021. Charge was framed on 23.3.2021. PWs mentioned at serial No.1,2,3,6,7 and 8 were ordered to be summoned

for 7.5.2021. On 7.5.2021 accused was not produced by the jail authorities. His production warrants were ordered to be issued and PWs were also ordered to be summoned for 4.6.2021. On 4.6.2021 no PW was present. Accused was not produced. Production warrants of accused were ordered to be issued for 2.8.2021. PWs were also ordered to be summoned for the date fixed. On 2.8.2021, no PW was present. PWs were ordered to be summoned for 14.9.2021. On 14.9.2021, no PW was present. PWs were ordered to be summoned for 28.10.2021. On 28.10.2021 no PW was present. PWs were ordered to be summoned for 13.12.2021.

On 13.12.2021 statement of PW Joga Singh was recorded in part. His further examination in chief was deferred on the request of learned Additional P.P for the State as he wanted to file application under Section 319 Cr.PC for summoning of other co-accused. In the column No.2 of the report under Section 173 Cr.P.C it was mentioned that investigation against accused Sukhwinder Singh and Harjinder Singh was pending. Accordingly status report regarding accused Sukhwinder Singh and Harjinder Singh was called from the SHO concerned for 19.1.2022. On 19.1.2022 status report regarding accused Sukhwinder Singh and Harjinder Singh was not received. Same was called from the SHO concerned for 14.3.2022. Accused Saroop Singh was not produced. His production warrants were ordered to be issued for the date fixed. On 20.12.2021 supplementary challan against accused Saroop Singh was presented. Same was attached with main file. It is respectfully submitted that more-than 3400 files including 356 IPC trial and about 800 NDPS trials are pending in this court. It is also submitted that due to Covid-19 courts are working restrictively.

Now case is fixed for 14.3.2022 for awaiting status report from the SHO concerned regarding accused Sukhwinder Singh and Harjinder Singh.

Status report is submitted please.

Yours faithfully,

Sd/-

(Harjeet Singh)

Additional District & Sessions Judge,

Amritsar

(UID No. PBO131)”

A perusal of the above zimini orders would show that on 28.09.2021, it was stated on behalf of the State that every endeavour would be made to examine the two eye-witnesses and one official witness who had been summoned by the trial Court for 28.10.2021 and on 11.11.2021 when the said witnesses were not examined, reassurance was again given on behalf of the State and complainant that the said witnesses would be examined on the next date of hearing. On 21.12.2021 it was pointed out that much progress has not been made in the trial and only one witness PW Janga singh has been examined that too, in part, and the prosecution had sought time to file an application under Section 319 Cr.P.C. for summoning of the other accused. In the said circumstances, the report of the trial Court was sought. A perusal of the said report which had been submitted, would also show that not much progress has been made in the trial and even the investigation with respect to the said two accused, Sukhwinder Singh and Harjinder Singh, is not complete. The case in fact has been adjourned to 14.03.2022 for awaiting status report from the SHO concerned regarding accused Sukhwinder Singh and Harjinder Singh. It is further apparent from the report that on 13.12.2021, a statement was made by the learned Additional P.P. that he wanted to file application under Section 319 Cr.P.C.

is apparent from the said report that the trial is moving at a snail's pace. The filing of the application under Section 319 Cr.P.C. and its final adjudication will also further delay the trial. The petitioner has been in custody since 03.08.2020 and more than 1 year and 6 months have lapsed since then and there are 19 prosecution witnesses and only one witness has been examined, that too in part and thus, the trial is likely to take time moreso, in view of the present pandemic, and the petitioner is not involved in any other case. The petitioner had withdrawn earlier application on 15.01.2021 and even thereafter, a period of more than 1 year has passed and yet the trial has not progressed. In addition to the above said factors, learned senior counsel for the petitioner has raised arguable points inasmuch as the three persons who are stated to be eye witnesses in the FIR, were neither the persons who had taken the deceased to the hospital, nor the persons who had been named in column no.4 of the inquest report for having identified the dead body of the deceased. Even Malkit Singh and Navpreet Singh, who had identified the dead body of the deceased, had given statements under Section 175 Cr.P.C. in which the presence of alleged eye witnesses Amandeep Singh, Mehal Singh and Janga Singh is not mentioned. Even the version which had been given by the complainant on 01.08.2020, had been subsequently improved inasmuch as on 07.08.2020, it had been stated by the complainant that on 01.08.2020 he was in a state of shock due to the death of his son and hence, could not state the complete facts and further alleged involvement of Sukhwinder Singh and Harjinder Singh in the present case. Even the motive, which has been alleged in the FIR behind causing the death of the deceased, is prima-facie a weak motive and all the above said factors would be considered at the time of trial, including the plea of the senior counsel for

the petitioner that the petitioner has been falsely implicated in the present case. It has also come out that there are several other cases against the complainant including the case of rape which as per counsel for the complainant, has been compromised, and had been instituted only to extract money from him.

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.

(VIKAS BAHL)
JUDGE

February 07, 2022
Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No