

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(213)

CRM-M-25831-2022

Date of decision: - 05.07.2022

Bohar Singh

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Salil Dev Singh Bali, Advocate,
for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail in FIR No.98 dated 21.08.2021, registered under Section 302 IPC and Section 27 of the Arms Act, 1959, at Police Station Kulgari, District Ferozepur.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has been made accused in the FIR on the statement made by his wife Paramjit Kaur and in the said FIR, she had stated that the petitioner used to pick fights in the house as he doubted the character of the complainant and during the course of the fight, he got angry and had fired at Sawan Singh, who is the son of the petitioner and the complainant. It is further submitted that it has been specifically alleged in the FIR that the petitioner after firing, had thrown his gun on

the spot and ran away from the spot. It is also submitted that a perusal of the disclosure statement of the petitioner dated 23.08.2021 (Annexure P-2) as well as recovery memo dated 23.08.2021 (Annexure P-3) would show that, as per the prosecution case, the recovery of the said gun had been made from the fields of the petitioner from inside the motor room, whereas, as per the FIR, it has been alleged that the petitioner had thrown the gun at the spot of alleged occurrence, in the house itself. It is further stated that in order to overcome the said lacuna, the supplementary statement of the complainant had been recorded on 31.08.2021 which was to the effect that the complainant was not mentally stable when she had made the original statement and it is only thereafter, that she came to know that the petitioner after firing had taken the said gun along with him and had fled. It is also submitted that only the said complainant and the alleged eye witness PW-2 have been examined and both of them had not supported the case of the prosecution and had rather submitted that the petitioner was not present in the house at the time of the alleged incident and two unidentified persons with muffled faces had entered their house and had caused death of Sawan Singh. It is also submitted that the petitioner is in custody since 21.08.2021 and out of total 18 prosecution witnesses, only 2 have been examined and 16 witnesses are yet to be examined, thus, the trial is likely to take time. It is further submitted that 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 in the FIR, the complainant had specifically named the present petitioner and as per the

scientific report, the pellets which have been recovered from the body of the deceased, had been fired from the licenced gun of the petitioner. It is also submitted that there are other witnesses such as the concerned doctor and the investigating officer, who are yet to be examined, who could support the case of the prosecution. The other factual aspects however, have not been disputed by learned State counsel.

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

As per the prosecution case, the star witnesses in the present case are Paramjit Kaur, who is the complainant as well as an eye witness and Ranjodh Singh, who is also stated to be an eye witness of the occurrence. Both the said witnesses have been examined. The relevant portion of statement of PW-1 Paramjit Kaur is reproduced hereinunder: -

"PW-1 on S.A.

Statement of Paramjit Kaur, aged about 45 years, wife of Bohar Singh, resident of Village Rukna Begu, Tehsil and Distt. Ferozepur.

1. Stated that on 20.08.2021 at about 9.00 PM, I was present at cattle shed of my house and my husband Bohar Singh had gone to the fields to water the paddy crop. My son Ranjodh Singh had gone to his maternal grandparents at Nathu Wali Basti. My son Sawan Singh and myself were alone in the house. Sawan Singh was present in the room. Two unidentified persons with muffled faces entered our house and they scuffled with my son and I heard noise of gun shot. It went to the room from the cattle shed and I found that my son was lying in pool of blood and on seeing me, the unidentified persons with muffled faces, fled away from the spot. My husband never murdered my son Sawan Singh. I never got recorded any statement to the police."

Perusal of the above said statement would show that the said

Paramjit Kaur has stated therein that the death of her son Sawan Singh had been caused by two unidentified persons with muffled faces and that the petitioner was not even present in the house at the time of the said occurrence and had gone to his fields to water the paddy crop. PW-2 Ranjodh Singh has also not supported the case of the prosecution. The relevant part of his evidence is reproduced as under: -

"PW-2 on S.A.

Statement of Ranjodh Singh, aged about 18 years, son of Bohar Singh, resident of Village Rukna Begu, Tehsil and Distt. Ferozepur.

1. Stated that on 20.08.2021 I had gone to my maternal grandparents at Nathu Wali Basti. Lateron, I came to know that some unknown persons, while trespassing our house, murdered my brother Sawan Singh. At that time, my brother Sawan Singh and my mother Paramjit Kaur were alone in the house. My father never murdered my brother Sawan Singh. I never got recorded any statement to the police."

Thus, from the statements reproduced hereinabove, it is apparent that the two eye witnesses have not supported the case of the prosecution. A perusal of the FIR would further show that it has been stated in the FIR by the complainant that after firing, the petitioner had thrown the gun on the spot and had ran away and the said incident had taken place inside their house. However, perusal of the disclosure statement dated 23.08.2021 (Annexure P-2) and the recovery memo dated 21.08.2021 (Annexure P-3) would show that the recovery of the gun was effected from the fields of the petitioner, from inside the motor room. The place of the said recovery is, *prima facie*, contrary to the allegations made in the FIR. It is the case of the petitioner that in order to overcome the said lacuna, the supplementary statement of the complainant dated

31.08.2021 (Annexure P-4) had been recorded which was to the effect that she was not mentally stable when she had registered the present FIR and it is only thereafter that she came to know that her husband after firing had taken the gun along with him. The petitioner has been in custody since 21.08.2021 and out of total 18 prosecution witnesses, only 2 have been examined and 16 witnesses are yet to be examined, thus, the trial is likely to take time. The petitioner is stated to be not involved in any other case.

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 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.

July 05, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes