

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

(219)

CRM-M-36187-2022

Date of decision: - 10.11.2022

Hardeep Singh @ Fauji

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Ashok Giri, Advocate, for the petitioner.

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

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VIKAS BAHL, J. (ORAL)

This is the second petition under Section 439 Cr.P.C. to grant regular bail to the petitioner in FIR No.70 dated 18.06.2021, registered under Sections 302/148/149 IPC and Sections 25/27/54/59 of the Arms Act, 1959 (Section 3(1) of SC/ST Act, 1989 has been added later on), at Police Station Jhabla, District Tarn Taran.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 25.06.2021 and the investigation is complete and the challan has been presented and out of total 28 prosecution witnesses, only one has been partly examined and thereafter, the prosecution has moved an application under Section 319 Cr.P.C. and the said application is pending consideration, thus, the trial is likely to take time. It is further submitted that the first bail petition of the petitioner was dismissed as withdrawn on 10.03.2022 with liberty to file a fresh

petition after giving better and complete particulars and the present petition has been filed after giving better and complete particulars and thus, in effect, the present petition is the first petition for regular bail. It is further submitted that as per the prosecution case, the present petitioner was carrying a pistol and co-accused of the petitioner, namely, Kuldeep Singh was carrying .12 bore gun and it has been alleged that both the petitioner and co-accused Kuldeep Singh had fired upon the deceased. It is also submitted that as per the postmortem report, only one gun shot injury has been received by the deceased and the said gun shot injury has been received from .12 bore gun, which as per the prosecution case was with co-accused Kuldeep Singh. It is stated that a perusal of page 26 of the paper-book would show that as per the report under Section 173 Cr.P.C., after investigation, it has been found that the present petitioner was not carrying any pistol. It is further stated that the petitioner has been implicated only on account of the fact that he is brother of said Kuldeep Singh and the said Kuldeep Singh had used .12 bore gun, which was of the petitioner and has been recovered from the present petitioner. It is also stated that Dilbagh Singh (PW-1) during his examination-in-chief has stated that it was the said Kuldeep Singh who was armed with .12 bore gun. It is submitted that from the said fact, it is apparent that no injury has been caused by the present petitioner in the present case.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the recovery of .12 bore gun which was used by co-accused Kuldeep Singh for firing at the deceased has been recovered from the present petitioner. It is further

submitted that the petitioner is involved in one more case.

Learned counsel for the petitioner, in rebuttal, 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 gone through the paper-book.

The petitioner has been in custody since 25.06.2021 and the investigation is complete and the challan has been presented and out of total 28 prosecution witnesses, only one has been partly examined and thereafter, the prosecution has moved an application under Section 319 Cr.P.C. and the said application is pending consideration, thus, the trial is likely to take time. Although, in the FIR it has been stated that the present petitioner was armed with pistol and Kuldeep Singh was armed with .12 bore gun, but during the course of investigation, as apparent from page 26 of the paper-book, it has been found that the present petitioner was not

carrying any pistol. It is not in dispute that the deceased had suffered one gun shot injury and the said fact is also prima facie apparent from the postmortem report (Annexure P-2) and that the said gun shot injury has been given by co-accused of the petitioner Kuldeep Singh. Moreover, Dilbagh Singh, who is the complainant and has appeared as PW-1 and has also reiterated the fact that it was the said Kuldeep Singh, who was armed with .12 bore gun.

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.

**November 10, 2022**  
naresh.k

**( VIKAS BAHL )**  
**JUDGE**

Whether reasoned/speaking?  
Whether reportable?

Yes/No  
Yes/No