

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on 27.09.2022

CRM-M No.43962 of 2022 (O&M)
Date of Decision: 17.10.2022

Sukhmandeep Singh

.....Petitioner

Vs

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Navkiran Singh, Advocate
for the petitioner.

Mr. Sanjeev Soni, Addl., A.G., Punjab.

Mr. Gobind Singh Randhawa, Advocate
for the complainant.

RAJ MOHAN SINGH, J.

Petitioner seeks grant of regular bail under Section 439 Cr.P.C in his second attempt in case bearing FIR No.133 dated 16.06.2020 registered under Sections 302, 307, 323, 120-B, 148, 149 IPC and Section 25 of the Arms Act at Police Station Dhariwal, District Gurdaspur.

FIR was registered at the instance of Gurpreet Singh,

wherein he has alleged that on 16.06.2020 at about 8:30 AM, he along with sons of his parental uncle namely Gagandeep Singh and Dilpreet Singh were going on a motorcycle and activa towards their fields. On the way, they stopped their vehicles and parked the same on the katcha road next to their fields. In the meanwhile, Jaswinder Singh @ Fauji, who is having a constructed house on the land adjacent to the land of the complainant, came there duly armed with a double-barrel gun. Son of Jaswinder Singh @ Fauji namely Sukhmandeep Singh (petitioner) and his son-in-law namely Gurbinder Singh also came out of the house. Jaswinder Singh @ Fauji fired two shots from his double-barrel gun directly at Gagandeep Singh, out of which, one shot hit on the left hand of Gagandeep Singh and second shot hit him in the chest. When Dilpreet Singh came forward to stop Jaswinder Singh @ Fauji, then the petitioner scuffled with Dilpreet Singh. In the meantime, Gurbinder Singh (son-in-law of Jaswinder Singh @ Fauji) took the gun from Jaswinder Singh @ Fauji and took out bullets from his pocket and reloaded the gun and thereafter, directly fired upon Dilpreet Singh, hitting him in his right side of stomach and left side of his chest. Dilpreet Singh fell in the paddy field at the spot. The complainant got frightened and after running some distance, stopped there and raised hue and cry. Thereafter, the petitioner took rifle from his brother-in-law and reloaded the same with the cartridges and fired upon the complainant, but the bullet did not hit the complainant as the complainant was at a distance. In the meanwhile,

wife of Jaswinder Singh @ Fauji and daughter Amandeep Kaur, who were standing at the gate of their house duly armed with swords started exhorting that the complainant party be not allowed to go scot free. On hearing the gun shots, father of the complainant who was working in the nearby fields came running towards the complainant and shouted that the complainant must run away from the spot. When the complainant started running, then the accused persons threw some heavy objects towards the complainant, hitting on the right leg and someone also fired at the complainant from the side of Dera. All the accused persons kept on firing at the complainant. Complainant ran away from the spot and took a shelter in a tubewell room and saved his life. After sometime, father of the complainant came there. Parental uncle namely Amarjit Singh Laadi also came to the complainant and his father and took them back to the spot in order to rescue the injured. Gagandeep Singh was lying dead. The body of Dilpreet Singh was thrown by the accused in the courtyard and the accused had fled away from the spot.

Learned counsel for the petitioner submitted that no injury has been attributed to the petitioner, except to allege that he took the gun from Gurbinder Singh and after reloading the same, fired upon the complainant, which did not hit the complainant. Besides the aforesaid allegation, there was allegation of scuffle with Dilpreet Singh. The alleged fire opened by the petitioner did not hit anyone as per allegations in the FIR. Complainant party has concocted the story as Gurbinder Singh was not in India and by way of

supplementary statement, Gurbinder Singh was sought to be replaced by Lovepreet Singh @ Lovi on 16.06.2020 after few hours of the registration of FIR. Petitioner is in custody for the last more than 2 years and 3 months. Learned counsel further submitted that in fact, three days prior to the incident, a complaint was made by Jaswinder Singh @ Fauji against the complainant party on 13.06.2020 with the allegations that on 12.06.2020 at about 11:30 AM, Dilpreet Singh and Amrik Singh had arrived and damaged the gate of his house and also pelted stones. Dilpreet Singh and Amrik Singh also used abusive language against Jaswinder Singh @ Fauji and others. They also extended threats of elimination. When Jaswinder Singh @ Fauji and others came out of the house by opening the gate, then by shouting loudly, Dilpreet Singh and Amrik Singh ran away from the spot on their motorcycle. Jaswinder Singh @ Fauji also alleged that the aforesaid persons are having adjoining land and by gathering the people, they used to consume liquor at the spot in order to create environment of fear in the mind of family members of Jaswinder Singh @ Fauji. Complaint dated 13.06.2020 filed by Jaswinder Singh @ Fauji was also signed by the witnesses.

Learned counsel further submitted that the factum of filing of the aforesaid complaint by Jaswinder Singh @ Fauji has been verified in CRM-M No.11578 of 2021 when affidavit of Jasbinder Singh, PPS, Deputy Superintendent of Police, Rural, District Gurdaspur was filed, though the police took the stand that the allegations were verified and the same were found to be false. In the

affidavit submitted by Jasbinder Singh, PPS, Deputy Superintendent of Police, Rural, District Gurdaspur, however the deponent admitted that during three days prior to lodging of FIR, effort was made to inquire from the present complainant party about the allegations made by Jaswinder Singh @ Fauji, but they were not found present at their house. The statement of Sarpanch of the village was recorded to the effect that he would produce the present complainant party before the police. In the meanwhile, the present occurrence took place and thereafter, inquiry was conducted in the complaint filed by Jaswinder Singh @ Fauji, thereby finding the same to be false.

Learned counsel also submitted that the complainant party was the aggressor in view of the attack opened by the complainant party on petitioner on 16.06.2020 at 8:30 AM, when he was harvesting the fodder for livestock in the land adjacent to his house. Dilpreet Singh armed with kirpan, Gagandeep Singh armed with baseball bat, Paramjit Singh armed with daang and Damanpreet Singh armed with daang came there. They started giving abuses to the petitioner and opened attack upon him. Petitioner ran towards his house and when he was about to close the gate of his house, then Dilpreet Singh gave a kirpan blow to the petitioner with an intention to kill him, which hitting on the backside of his bicep on right arm. Thereafter, Gagandeep Singh was about to give a blow with baseball bat towards head of the petitioner. Lot of blood was oozing out from the wounds of the petitioner. Jaswinder Singh @ Fauji on seeing the

occurrence, fired gun shots from his licensed gun and the bullet hit Dilpreet Singh and he fell down. Thereafter, Gagandeep Singh by coming at the spot open attacked upon Jaswinder Singh @ Fauji with baseball bat and inflicted injuries on the right hand and left arm. Jaswinder Singh @ Fauji again fired a gun shot on Gagandeep Singh and Gagandeep Singh fell down in front of the crop by running out of the gate of the house of Jaswinder Singh @ Fauji. Thereafter, all the assailants fled away from the spot.

With these allegations, Jaswinder Singh @ Fauji filed a criminal complainant i.e. C/S No.Comi-160-2020 dated 10.11.2020 under Sections 452, 307, 323, 324, 148, 149 IPC, Police Station Dhariwal against Gagandeep Singh, Dilpreet Singh, Paramjit Singh, Damanpreet Singh and Amrik Singh in the Court of Judicial Magistrate Ist Class, Gurdaspur.

After leading preliminary evidence by the complainant Jaswinder Singh @ Fauji, Judicial Magistrate Ist Class, Gudasgur vide order dated 14.03.2022, has summoned the accused in the criminal complaint i.e. Gagandep Singh and Dilpreet Singh under Sections 452, 307, 148, 149 IPC and Damanpreet Singh and Paramjit Singh under Sections 452, 323, 324, 148,149 IPC .

By referring to the aforesaid facts, learned counsel for the petitioner contended that the complainant party has suppressed the origin and genesis of the occurrence. In fact, occurrence has not taken place in the manner as pointed out by the complainant party, but the real occurrence has taken place in view of allegations

contained in the complaint dated 10.11.2020 filed by Jaswinder Singh @ Fauji, in which complainant party has been summoned by Judicial Magistrate Ist Class, Gurdaspur vide order dated 14.03.2022.

Learned counsel further submitted that co-accused Harjinder Kaur has already been granted regular bail by this Court vide order dated 16.02.2021 passed in CRM-M No.3213 of 2021. The name of Gurbinder Singh has been repeatedly shown in the FIR as son-in-law of Jaswinder Singh @ Fauji. On finding that Gurbinder Singh was not available in India on the day of occurrence, his name was replaced with Lovepreet Singh @ Lovi. Lovepreet Singh @ Love has also been granted regular bail vide order dated 22.08.2022 passed in CRM-M No.11578 of 2021. **SLP(Crl.) Diary No.27946/2020** titled **Gurpeet Singh Vs. The State of Punjab and another** has been dismissed by the Hon'ble Apex Court on 30.09.2022.

Learned counsel further submitted that the complainant Gurbinder Singh has been examined as PW-1 and he has made material improvement in his statement while deposing that the petitioner took double-barrel gun from Lovepreet Singh @ Lovi and after loading the same, opened fire upon the complainant, but the complainant was saved as he started running. Thereafter, the petitioner fired from gun towards Gagandeep Singh, which hit on his right shoulder.

By referring to the aforesaid, learned counsel submitted that

a material improvement is sought to be made by the complainant while appearing as PW-1. The witness was confronted with his original statement, wherein it was mentioned that the petitioner had taken rifle from his brother-in-law Gurbinder Singh and the name of Lovepreet Singh @ Lovi was not mentioned. This fact has been admitted by the complainant that he had mentioned so in his original statement.

Per contra, learned State counsel duly assisted by the learned counsel for the complainant opposed the bail on the ground that the petitioner has participated in the occurrence and in view of statement of the complainant as PW-1, the witness has attributed specific role to the petitioner, thereby attributing gun shot injury on the person of Gagandeep Singh.

Perusal of the allegations forming subject matter of FIR would show that initially, the firearm was used by Jaswinder Singh @ Fauji. Thereafter, it was allegedly taken by Gurbinder Singh (wrongly mentioned in the FIR). The name of Gurbinder Singh was replaced with Lovepreet Singh @ Lovi. The reloading of the rifle was allegedly done by Lovepreet Singh @ Lovi after taking out bullets from his own pocket and thereafter, the same weapon was used by Lovepreet Singh @ Lovi for firing upon the person of Dilpreet Singh. Thereafter, the weapon was taken by the petitioner from his brother-in-law Gurbinder Singh (as per FIR), but in view of supplementary statement, it was taken from Lovepreet Singh @ Lovi. The supplementary statement made by the complainant after registration

of the case, thereby changing the name of Gurbinder Singh and replacing him with Lovepreet Singh @ Lovi, would remain debatable.

Apparently, one weapon has been allegedly used by all the three accused by taking the same from each other and by reloading the same by their own cartridges in their individual possession. All the accused brought their individual cartridges for the same weapon and allegedly used the same by taking the weapon from each other. Co-accused Hajinder Kaur and Lovepreet Singh @ Lovi have already been granted regular bail by this Court. Petitioner is in custody for the last more than 2 years and 3 months. In the original version, no injury has been attributed to the petitioner, except firing upon the complainant, which did not hit the complainant. In the statement of the complainant before the trial Court as PW-1, the injury has been attributed to the petitioner, that too, firearm injury on the right shoulder of Gagandeep Singh. The statement of the complainant while appearing as PW-1 and the allegations forming subject matter of FIR, would be tested by the trial Court on proper appreciation of evidence. Petitioner has also received serious injury, for which, the complainant party has also been summoned in a complaint case by Judicial Magistrate Ist Class, Gurdaspur.

In view of allegations on record, the complicity of the petitioner would remain debatable. Out of total 20 prosecution witnesses, only two witnesses have been examined so far. Complainant has already been examined on 26.07.2022.

In view of aforesaid position and without meaning anything

on merits of the case, I deem it appropriate to enlarge the petitioner on regular bail subject to his furnishing adequate bail bonds and surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.

Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

17.10.2022
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No