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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-52583-2022 (O&M)

Date of Decision: 02.12.2022

Barjinder Singh Parwana

.....Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. G.P.S. Ghumaan, Advocate and
Mr. K.D.S. Bajwa, Advocate
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition is filed under Section 439 of Code of Criminal Procedure for seeking grant of regular bail in case FIR No.305 dated 19.12.2021 Cross case under Section 302, 307, 353, 186, 342, 332, 201, 148, 149, 107, 120-B of IPC 25-54-59 of Arms Act, registered at Police Station Kotwali, Kapurthala.

Learned counsel for the petitioner has submitted that the petitioner is in custody from 11.05.2022 which is 6 months and 25 days. He further submitted that it is a case where the allegations were that one unknown person had entered into the gurudwara premises and the lock was also found broken and thereafter the Granthi of the Gurudwara Sahib had raised alarm and ultimately some people have gathered there. He further submitted that the FIR was registered vide Annexure P-1 under Section 295 A IPC. Since it was a case of alleged sacrilege in Gurudwara Sahib and on information people gathered but thereafter one of the persons from the crowd namely, Harpreet Singh had fired upon the unknown person who had died and,thereafter

offences under Sections 302, 307, 353, 186, 342, 332, 201, 148, 149, 107, 120-B of IPC 25-54-59 of Arms Act were added. He submitted that after a period of about 6 months one advocate who was inimical to the petitioner wrote an email to the police authorities on 29.04.2022 that the petitioner is of criminal background and he was also involved in the present case and acting upon the said email, the police immediately nominated the petitioner on the next day i.e. 30.04.2022 even without investigating the role of the petitioner and mechanically on the basis of the email. Learned counsel has submitted that although there was a video on social media whereby the petitioner was allegedly seen expressing his expressions but it is not the case of the police that the petitioner has caused the death of the unknown person in the premises of the Gurudwara and even otherwise also the role attributed to the petitioner was general in nature for inciting the sentiments on social media but not with the offence of murder. He submitted that the investigation of the case has already been completed by the police and now challan has been presented on 05.08.2022. He submitted that in view of the aforesaid facts and circumstances, the petitioner may be considered for grant of regular bail since the trial of the case may take long time. He has further submitted although there are 5 other cases against the petitioner but the petitioner is already on bail in all those cases and the mere pendency of the other cases against the petitioner cannot become a ground for denial of bail to the petitioner especially in the aforesaid facts and circumstances. He has further submitted that in the other cases also he is under trial and he has not faced any conviction from any court of law.

On the other hand, Mr. Kunal Vinayak, AAG, Punjab, on instructions from S.I. Sokhpal Singh, who is present in the Court, has stated

that it is correct that the petitioner has faced incarceration for 6 months and 25 days and he has also filed the custody certificate which is taken on record. He has submitted that it is correct that the police has completed the investigation process and has filed challan before the Court but charges have not been framed yet. He also, on instructions from SI Sukhpal Singh, stated that the name of the petitioner was nominated on the basis of email dated 29.04.2022 which was received after a gap of about 6 months from the date of the incident and on the next day on the basis of email his name was nominated and it was thereafter that the statement of the person who had sent the email was recorded on 03.05.2022 vide Annexure P-3. He has also stated that it is also correct that the firing was done by the other co-accused namely, Harpreet.

The learned State counsel has however opposed the grant of bail on the ground that the petitioner had incited the crowd through social media and apart from the same he is also involved in 5 more cases and keeping in view his background he does not deserve the concession of regular bail.

I have heard the learned counsel for the parties.

It is a case where the petitioner is in custody for 6 months and 25 days as per the custody certificate and as per the learned counsel for the parties, the investigation is completed and thereafter challan has been presented before the competent Court but the matter has not been committed before the court of Sessions.

As per both the learned counsels for the parties, the act of firing was attributed to other co-accused namely, Harpreet Singh and the name of the petitioner was nominated after a period of about 6 months on the basis of an email which was sent by a lawyer to the police authorities and acting upon the email, the petitioner was nominated on the next day and it was thereafter

about 3 days that the statement of that aforesaid lawyer was recorded vide Annexure P-3.

The argument raised by learned counsel for the petitioner that even without investigation the matter qua the petitioner and acting only on the basis of an e-mail, his name was wrongfully nominated does carry weight. Even otherwise the role attributed to the petitioner was as per learned counsel for the parties, of inciting the crowd through social media. The nature of words and expressions spoken by the petitioner and its effect can be ascertained by way of adducing evidence only at the time of trial.

The objection raised by the learned State counsel that the petitioner is involved in 5 more cases cannot become a ground for denial of bail in the peculiar facts and circumstances in the present case where as per the learned counsel for the petitioner, he is still under trial in all these cases and he is on bail and the name of the petitioner was nominated after a gap of about 6 months. It is not a case of the learned State counsel that in case the petitioner is released on bail then he may abscond from justice, influence the witnesses or tamper with evidence.

The trial of the case may take long time and therefore in the aforesaid peculiar facts and circumstances, this Court is of the view that the petitioner deserves the grant of regular bail.

Consequently, the present petition is allowed. The petitioner shall be released on regular bail, subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

However, anything observed herein above shall not be treated as an expression of opinion on merits of the case & is only meant for the purpose

of decision of present petition.

02.12.2022
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(JASGURPREET SINGH PURI)
JUDGE

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