

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CRM-M-54603-2021(O&M)
Date of decision: 22.02.2022

GURWINDER SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Arshdeep Singh Brar, Advocate
for the petitioner.

Ms. A.K. Khurana, DAG Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

Instant petition has been filed under Section 439 CrPC seeking concession of regular bail to the petition in case FIR No.89 dated 18.09.2021 under Section 124-A IPC and Sections 3, 4, 5 and 9 of the Official Secrets Act, 1923 registered at Police Station Cantt. Bathinda.

Mr. Arshdeep Singh Brar, Advocate appears on behalf of the petitioner and files his power of attorney in the Court today since the earlier counsel has expired. The same is taken on record. Registry to tag the same at appropriate place.

It is *inter alia* contended by the learned counsel for the petitioner that initially the FIR had been registered for offences under Sections 124-A IPC and Sections 3, 4, 5 and 9 of the Official Secrets Act, 1923, however, in the final report filed on 14.09.2021, Section 124-A IPC stands deleted. It is further contended that the charges in the case have not been framed so far and the petitioner is in custody since 18.09.2021.

Learned counsel for the petitioner further contends that the documents referred to in the FIR, that are alleged to have been recovered from the

petitioner, who is a Peon, are in the public domain and have in fact been uploaded on the official website. He has drawn a reference to the document, available as a part of the final report, stated to have been issued by the Headquarters Military Engineer Services on 08.11.2021 which reads thus:-

(a) It is submitted that the majority of documents are related to contract management works of this Deptt., and are readily accessible on departmental website. The three maps recovered are also available with the tender documents on departmental website. Other documents are related to individuals own posting on compassionate ground and one copy of which could be kept by the individual in his personal life.

(b) He was working as a Multi Tasking Staff (MTS) Peon and was performing regular day to day duties assigned to him. He was not allowed to take any official documents out of the office premises under Indian Official Secret Act, 1923. However, none of the documents received through your letter referred above is of restricted/confidential nature.

(c) He was appointed and taken on strength w.e.f. 09 Feb 2016.

(d) His ID Card No. D-124765 was issued to him on 11 Feb 2016 upon his appointment as Peon by this office.

3. It is also pertinent to mention that no missing documents in the office has been reported. This is for your information and necessary action please.'

The said communication is taken on record as 'X'.

Ms. A.K. Khurana, learned DAG, Punjab, opposes the prayer of the petitioner for grant of bail by pointing out that the allegations recorded in the FIR are severe and there was no reason as to why the petitioner should be in possession of the said documents. Invariably, the intent of the petitioner was malicious. The said documents were in the custody of the petitioner when he was arrested. She vehemently argues that the petitioner, being MTS Peon used to talk to Pakistani Intelligence Operative (PIO) on WhatsApp and used to supply discrete, important

and secret information of the Indian Army to them. He was wandering at Bibiwala Chowk on the day when he was apprehended and a mobile phone was recovered from him, which has been sent to the Director, D.I.T.C. Phase IV Mohali, for recovery of data. The said report is still awaited. Learned State counsel has further argued that the statement of the witnesses have been recorded during of the course of investigation pointing out the modus operandi of the petitioner conveying information to the Pakistani Intelligence Operative through one Khushpreet Kaur sharing important and secret information of the Indian army. It is, however, not disputed by her that the offence under Section 124-A IPC stands deleted and that the investigation in the case is complete. It is also not a subject matter of dispute that the letter dated 08.11.2021 sent by Headquarters Military Engineer Services is part of final report under Section 173 CrPC. There is no reference to any alleged secret data shared by the petitioner who was a Peon and had no access to confidential data.

I have considered the submissions advanced on behalf of the respective parties and perused the record with their assistance.

A perusal of the aforesaid communication sent by the Headquarters Military Engineer Services shows that the documents recovered from the possession/disclosure of the petitioner are readily accessible on the departmental website including the maps. The other documents pertained to his own posting on compassionate ground. It is further reiterated in the aforesaid letter that the none of the documents received by the Headquarters Military Engineer Services through the Investigating Officer was of restricted/confidential nature. Without going further into the question as to whether Official Secrets Act, 1923 would be applicable with respect to the documents that are already uploaded on official website and are available for general viewing and considering that the final report

has been filed only for offences under the Official Secrets Act, 1923, wherein, the offence under Section 3 of the Official Secret Act would attract a sentence of 03 years, in the event the charge against him is proved. Section 4 of the Official Secret Act is not a punishing section. Section 5 of the Official Secret Act again stipulates a punishment extendable up to 03 years. Section 9 of the Official Secret Act is an attempt/incitement and carries the same punishment as the substantive offence. Hence, in the event of the charges being established, the maximum penalty which the accused is likely to undergo is 3 years.

The petitioner has been in custody since 18.09.2021 and has already undergone more than 05 months of actual custody. The trial is still at initial stage and charges are yet to be framed. The petitioner is not required any further for the purpose of investigation.

Accordingly, the present petition is allowed and the petitioner is admitted on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of trial Court/Duty Magistrate, concerned.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of available material.

(VINOD S. BHARDWAJ)
JUDGE

February 22, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>