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

CRM-M-8529-2023 (O&M)

Date of decision: 23.08.2023

Harwinder Singh @ Kala

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sandeep Wadhawan, Advocate and
Mr. Suvir Tandon, Advocate for the petitioner.

Mr. Ferry Sofat, Addl. A.G. Punjab.

VIKAS BAHL, J. (ORAL)

1. This is a second petition filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in FIR No.86 dated 19.11.2019 registered under Sections 302, 148, 149 of the Indian Penal Code, 1860 (Sections 506 and 120-B of IPC have been added later on) and Section 25 of the Arms Act No.27 of 1959 registered at Police Station Kotli Surat Mallian, District Batala.

2. Learned counsel for the petitioner has submitted that FIR, in the present case, has been registered on the statement of Sandeep Singh and in the said FIR, three persons were specifically named i.e. Balwinder Singh who was stated to be armed with *daatar*, Mandeep Singh and Major Singh, both stated to be armed with pistol. It is further submitted that the petitioner has not been named in the FIR although it has been stated that there were 4-5 other unidentified persons, out of whom, one person was armed with a

pistol. It is contended that with respect to the unidentified persons, no specific injury caused to deceased-Dalbir Singh has been attributed to them in the FIR and that the complainant, thereafter, recorded supplementary statement on 19.11.2019 itself, in which also, he has not named the petitioner. It is argued that the co-accused Amritpal Singh was arrested on 25.11.2019 and the said Amritpal Singh in his disclosure statement (Annexure P-2), had stated that it was Harjinder Singh @ Jinda who was armed with pistol and that Harjinder Singh @ Jinda was not named in the FIR and thus, the one unknown person who was carrying the pistol was, as per the statement of co-accused Amritpal Singh, the said Harjinder Singh @ Jinda. It is also submitted that in the present case, three main accused who were named in the FIR were Major Singh, Balwinder Singh and Mandeep Singh. Major Singh, in his disclosure statement (Annexure P-13) has not named the present petitioner and has stated that Mandeep Singh, his brother was armed with a pistol and he himself was also armed with a pistol. It is also contended that in the said disclosure statement of Major Singh, Harjinder Singh @ Jinda was also stated to be armed with a pistol. Balwinder Singh, who is the father of Major Singh and Mandeep Singh, has also not named the present petitioner in his disclosure statement dated 19.12.2019 (Annexure P-4). It is argued that the petitioner, for the first time, has been named in the disclosure statement of Mandeep Singh dated 26.04.2020 who is the third accused named in the FIR. It is stated that the disclosure statement of Mandeep Singh is contrary to the disclosure statement of Major Singh, Balwinder Singh and also the other co-accused inasmuch as in the disclosure statement of Mandeep Singh, it had stated that

the present petitioner had fired gunshots with his pistol. Reference has been made to the disclosure statement of Mandeep Singh (Annexure P-14) to highlight the fact that with respect to his brother namely Major Singh, he has stated that said Major Singh was armed with *daatar* whereas as per the disclosure statement of Major Singh (Annexure P-13), Major Singh himself has stated that he was armed with a pistol. It is stated that the said Mandeep Singh tried to save himself by not making any incriminating statement against himself in his disclosure statement, although, it is the specific case of the complainant in the FIR that Mandeep Singh was armed with a pistol and had fired shots along with his brother Major Singh. It is argued that no recovery has been effected from the present petitioner, much less, of any pistol whereas recovery of pistol was effected from Mandeep Singh, Major Singh and Lovepreet Singh.

3. Learned counsel for the petitioner has submitted that a perusal of order dated 27.10.2020 (Annexure P-8) passed by the Additional Sessions Judge, Gurdaspur granting the concession of bail to Lovepreet Singh @ Love, would show that in para 16 of the said order, it has specifically been recorded that as per the injury chart of Dalbir Singh, injury on the head has been attributed to Mandeep Singh with pistol, injury on the left thigh has been attributed to Jagmeet Singh with pistol, injury on the right side of the chest with firearm has been attributed to Lovepreet and injury on the left side of the chest has been attributed to Major Singh with pistol. It is also submitted that as per the said injury chart, regarding which, specific note has been given in para 16 of the said order, no injury has been attributed to the present petitioner and that Lovepreet Singh, to whom the

injury has been attributed on the right side of the chest with firearm, has been granted the concession of regular bail. It is also contended that the petitioner is in custody since 19.04.2021 i.e., more than 2 years and 4 months and there are 35 prosecution witnesses, out of whom, only one witness has been examined and thus, the conclusion of trial is likely to take time and that the previous regular bail application filed by the petitioner was withdrawn at that stage on 12.09.2022 with liberty to the petitioner to file a fresh petition after examination of the complainant and after passing of the said order, the complainant has been examined on 01.04.2023 and has further submitted that since, even after withdrawal of the said regular bail, not much progress has been made in the present case, thus, the petitioner is entitled to the grant of concession of regular bail.

4. Learned State Counsel, on the other hand, has opposed the present petition for grant of regular bail to the petitioner and has submitted that the petitioner has been named by Mandeep Singh in his disclosure statement dated 26.04.2020 as well as by Jagdish Singh @ Jagga and Lovepreet Singh whose statements were also recorded on 26.04.2020 and all the three witnesses have stated that the present petitioner was also involved in the present case and he had fired shots towards Dalbir Singh with pistol. It is also submitted that the petitioner was declared as Proclaimed Offender and has been arrested on 19.04.2021 and that the petitioner is also involved in two other cases. However, the other facts have not been disputed by him.

5. Learned counsel for the petitioner, in rebuttal, has submitted that even the statement of Jagdish Singh @ Jagga and Lovepreet Singh have

been recorded along with statement of Mandeep Singh on 26.04.2020 after a delay of more than five months from the registration of the FIR and the said statements are contrary to the disclosure statement made by the two main accused Balwinder Singh and Major Singh who have been specifically named in the FIR. It is further submitted that the version given by complainant-Sandeep Singh is similar to the version given in the disclosure statement of Major Singh but does not match with the version given by Mandeep Singh, Jagdish Singh @ Jagga and Lovepreet Singh. It is further contended that as per the FIR, only one unidentified person was armed with a pistol and the said pistol has been recovered from Lovepreet Singh, who has also been attributed specific injury caused to the deceased and has been granted the concession of regular bail by the Additional Sessions Judge, Gurdaspur. With respect to the petitioner being involved in two other cases, learned counsel for the petitioner 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 and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. 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."

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

7. FIR, in the present case, was registered on 19.11.2019 and three persons i.e., Balwinder Singh, Mandeep Singh and Major Singh were specifically named in the FIR and the present petitioner was not named. Balwinder Singh was stated to be armed with a *daatar* and Mandeep Singh and Major Singh were stated to be armed with pistol. In the FIR, it was also stated that 4-5 unidentified persons were also present, out of whom, one person was armed with a pistol. The complainant had recorded supplementary statement on 19.11.2019, in which also, the petitioner has not been named. Amritpal Singh, co-accused was arrested on 25.11.2019 and even in his disclosure statement (Annexure P-2), the petitioner has not been named but in addition to the other accused, one Harjinder Singh @ Jinda was named who was stated to be armed with a pistol. Balwinder Singh, who is the person named in the FIR, in his first disclosure statement dated 19.12.2019, has also not named the present petitioner. Major Singh, who is one of the persons named in the FIR and is alleged to be carrying a pistol as per the FIR, has, in his disclosure statement (Annexure P-13), not named the present petitioner and had specifically stated that he and his brother Mandeep Singh were armed with a pistol. The said statement was recorded on 28.01.2020 and till the said time the petitioner was not named by any witness or co-accused. On 26.04.2020, the statements of three co-accused i.e., Mandeep Singh (who is named in the FIR and is the brother of Major Singh), Jagdish Singh @ Jagga and Lovepreet Singh, were recorded in which the present petitioner was named. A perusal of the

disclosure statement of Mandeep Singh (Annexure P-14) would show that version given in the same is not in consonance with the version given by the complainant or by his brother Major Singh in his disclosure statement on 28.01.2020 or by Balwinder Singh, his father. Said Mandeep Singh, in his disclosure statement, had stated that Major Singh had given a *daatar* blow to Dalbir Singh whereas in the statement of Major Singh as well as in the statement of complainant Sandeep Singh, on the basis of which the FIR was registered, said Major Singh was stated to be armed with a pistol. Mandeep Singh, in the said disclosure statement, had for the first time stated that even the present petitioner had fired three shots at Dalbir Singh with his pistol. The statements of Jagdish Singh @ Jagga and Lovepreet Singh which were also recorded on 26.04.2020 and are stated to be on similar lines. Thus, the said version that the petitioner had also fired shots has, for the first time, come about on 26.04.2020 and after a delay of more than five months from the date of registration of the FIR. No recovery of pistol has been effected from the present petitioner. A perusal of the order dated 27.10.2020 (Annexure P-8), vide which, bail has been granted to Lovepreet Singh @ Love, would show that the Court, in para 16 of the said order (at page 37 of the paper book), has taken into consideration the injuries suffered by Dalbir Singh and has also tabulated the attribution of injuries to various co-accused which includes the injury on the head with a pistol attributed to Mandeep Singh, injury on the left thigh attributed to Jagmeet Singh with pistol, injury on the right side of the chest with firearm attributed to Lovepreet and injury on the left side of the chest attributed to Major Singh with pistol. No injury has been attributed to the present petitioner in the said para 16. Lovepreet

Singh, to whom the injury has been specifically attributed as per the observations made in para 16 of the said order, has been granted the concession of regular bail by the Additional Sessions Judge, Gurdaspur. The petitioner is in custody since 19.04.2021 i.e., more than 2 years and 4 months and out of 35 prosecution witnesses, only one witness has been examined as yet and thus, the conclusion of trial is likely to take time.

8. Keeping in view the abovesaid facts and circumstances, the present petition is allowed and the petitioner is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to him not being required in any other case.

9. 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.

10. Nothing stated above shall be construed as an 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 application.

11. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

23.08.2023*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**