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

**CRM-M-18395-2023 (O&M)
Date of Decision: 25.08.2023**

Manish Parbhakar

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Prem Kumar, Advocate,
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case bearing FIR No.102 dated 10.10.2015, under Sections 302/34 IPC and Section 25(1), 27(54)59 of the Arms Act registered at Police Station Phase-8, District Mohali.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody for 6 years, 11 months and 16 days. He further submitted that it is a case where the petitioner was earlier granted bail by a Co-ordinate Bench of this Court on 19.12.2018 vide (Annexure P-2) especially on the ground that he had already faced incarceration for 3½ years and no witness was examined at that point of time. He also submitted that thereafter he was appearing before the learned trial Court but on 22.10.2019, the learned Additional Sessions Judge, SAS Nagar, Mohali had cancelled the bail of the petitioner on the

ground that he was not present in the Court and it was informed by the learned Public Prosecutor for the State that the accused had committed another offence and had shot the witness, who is the complainant in this case and that is why he intentionally was not present in the Court and consequently his bail was cancelled on 22.10.2019. Learned counsel for the petitioner further submitted that in fact the petitioner was already taken into custody in some other case at Barnala that was the reason as to why he could not appear and so far as the allegation that he had shot at the complainant of this case is concerned, he has been falsely implicated in that case under Section 307 of the IPC and he has already been extended the benefit of regular bail in the aforesaid case. He also submitted that the mother of the deceased had filed a petition before this Court to challenge the order passed by the trial Court in the application under Section 311 Cr.P.C. moved by the petitioner for further cross-examination of key eye-witness, namely, Veer Singh in which this Court had issued notice of motion on 13.09.2019 and had also directed that in the meanwhile the trial Court is directed to adjourn the case beyond the date fixed by this Court and it was made clear that the interim order shall be only for the purpose of the next date fixed before the trial Court and would not deem to mean that the trial Court is to adjourn the case thereafter also unless there is a specific order by this Court. He further submitted that thereafter the learned Magistrate had adjourned the case for a number of time and consequently the trial could not commence and now the custody of the petitioner is 6 years, 11 months and 16 days and therefore, the petitioner may be considered for the grant of regular bail.

3. On the other hand, Mr. Sarbajit Singh Cheema, learned DAG, Punjab has submitted that it is a case where the petitioner was although granted

bail by this Court on 19.12.2018 but thereafter, his bail was cancelled by the trial Court on the ground that he was absent from the Court on 22.10.2019 and on 18.10.2019, he fired shot at the complainant of the present case and consequently, an FIR under Section 307 IPC was registered against him. He further submitted that against the order of cancellation of bail dated 18.10.2019, the petitioner has also filed a petition before this Court but the same was dismissed by a Co-ordinate Bench of this Court vide Annexure P-6 and therefore, the order of cancellation of bail had attained finality. He also submitted that while the petitioner was on bail he had fired shot at the complainant which is very serious and very grievous in nature and therefore, the petitioner does not deserve the concession of regular bail and the State has apprehension that in case he is released on bail then he may abscond or flee from justice or may influence the witness and has vehemently opposed the grant of bail to the petitioner.

4. I have heard the learned counsels for the parties.

5. It is a case where the petitioner although is in custody for a long time i.e. 6 years, 11 months and 16 days but this Court had to consider the prayer of the petitioner for grant of regular bail based upon long custody while taking into consideration all the relevant factors. The allegations against the petitioner were that while he was on bail, he had shot at the complainant of the present case and consequently an FIR under Section 307 IPC was registered against him. The aforesaid FIR under Section 307 IPC was dated 18.10.2019 and despite being granted bail the petitioner did not appear before the learned trial Court on 22.10.2019, on which date his bail was cancelled by the learned trial Court. Thereafter, he had filed a petition before this Court and the same

was dismissed.

6. The allegations against the petitioner as contained in the FIR were that the complainant and his family were in the business of mud utensils at Village Lambian, near Kumbra Chowk and on 10.10.2015 at about 1.00 p.m. in the afternoon, when the complainant was selling utensils etc. then five persons came there and out of which one sat on the iron cot near my shop and out of them, one person went away, in the meanwhile, one boy made some joke with the boy sitting on the cot and took out a pistol from his waist and fired shot by aiming near the head of the boy sitting on the cot and rest of the two persons ran away saying that work has been done and let us run. The person who had fired the shot, due to being very heavy, began to run but he could not run. Blood had stained on the clothes worn by him because he had fired a shot from very close range. The public present there caught hold him, who disclosed his name as Manish Prabhakar, who is the present petitioner. The pistol by which he had shot the boy was also confiscated.

7. The allegations against the petitioner in the FIR itself are very serious but the seriousness of the allegation in the present FIR itself although cannot be a ground for denial of bail considering the long custody of the petitioner but it is subsequent conduct of the petitioner which requires serious consideration. Since the trial was not commencing, this Court called for the report from the learned trial Court on the last date of hearing with regard to the same and now the report has been received from the learned trial Court dated 22.08.2023, in which it has been so stated that although there was an interim order passed by this Court and it was also directed by this Court on 13.09.2021 vide Annexure P-11 that the interim order would not deem to mean that the

trial Court is to adjourn the case thereafter unless there is a specific order by this Court in this regard. Thereafter, the case was adjourned from time to time as the accused was not produced by the jail authorities and no further orders were passed by the High Court was received. Thereafter, vide order dated 18.10.2022, with reference to the order passed by this Court on 13.09.2021, the case was fixed for prosecution evidence and next date fixed is 29.08.2023. Three prosecution witnesses have been examined till date. The witnesses have not been served despite summons being sent to the SSP, SAS Nagar, and every effort is made to secure the presence of the witnesses at the earliest. Therefore, this Court is of the considered view that now as per the report of the learned Additional Session Judge, the trial has again commenced since there was no continuation of the interim order passed by this Court in the year 2021. As per the learned State Counsel, the total number of witnesses are 24 and as per the report of the learned trial Judge, 3 prosecution witnesses have already been examined and it has also been so stated in the report by the learned trial Judge that every effort is being made to secure the presence of the witnesses at the earliest.

8. Consequently, this Court is of the view that considering the conduct of the petitioner whereby the allegation against him was that while he was on bail in the present case he had shot at the complainant who was also witness of the case, the petitioner does not deserve the concession of regular bail notwithstanding the fact that the petitioner is already on bail in the aforesaid case under Section 307 IPC.

9. Consequently, the present petition is hereby dismissed.

10. However, anything observed hereinabove shall not be treated as an

expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

11. However, this Court is also of the considered view that since the custody of the petitioner is very large and now the learned trial Judge has also reported that every effort is being made to secure the presence of the witnesses at the earliest, it will be just and proper to direct the learned trial Court to expedite the trial on priority basis due to the reason that the custody of the petitioner is very large. It is directed that every effort shall be made by the learned trial Court to conclude the trial as expeditiously as possible and preferrably within a period of six months from today.

12. A copy of this order be sent to the learned trial Court.

25.08.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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