

CRM-M-22129-2021(O&M)

206 (1st case)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-22129-2021 (O&M)

Date of decision: July 07, 2023

Makhan Singh @ Makhan

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Bhanu Pratap Singh, Advocate for petitioner.

Ms. Guramrit Kaur, DAG Punjab.

ARUN MONGA, J. (ORAL)

Present petition has been filed under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') read with Section 167(2) Cr.P.C. and Section 43-D of the Unlawful Activities (Prevention) Act, 1967 (for short 'UAPA Act') for grant of default bail in case FIR No.204 dated 04.10.2020, under Sections 121, 153, 120-B of the Indian Penal Code, 1860 (for short 'IPC') and Sections 25, 54, 59 of the Arms Act, 1959 (for short 'Arms Act'), registered at Police Station Mahilpur, District Hoshiarpur.

2. Per prosecution version, on secret information, SI Nirmal Singh along with police party held a *naka* (barricade) at T-Point Bridge of Canal of Village Noorpur Jattan. One car was seen coming from Kot Fatuhi side and upon signal, driver of the car stopped it. Person sitting on the rear seat of the driver side tried to run away having a bag in his hand and the driver also tried to escape. However, they were apprehended. Person sitting on the rear seat disclosed his name as Makhan Singh @ Makhan (present petitioner) son of Diwan Singh and the driver told his name as Dawinder Singh @ Happy son of Sohan Singh. Upon search, one pistol black coloured with Signa F and 9.19 MM written on the body of the pistol

was recovered from left *dub* of petitioner. When magazine of said pistol was checked, 15 live cartridges were recovered and total 30 rounds. From the bag, in right hand of the petitioner, one gun MP5 and two magazines containing 15/15 each total bullets 30 were recovered.

3. Learned counsel for the petitioner states that mandatory period of 90 days has already elapsed *qua* petitioner but prosecution has not placed on record mandatory sanction for prosecution order under Section 45 of UAPA Act and also under Section 196 Cr. P.C. Prosecution has not filed any application for extension of time for investigation from 90 to 180 days as per Section 43-D of UAPA Act. He also submits that although prosecution filed incomplete challan on 26.03.2021, but complete challan containing sanction order has not been placed before learned Magistrate.

4. On the other hand, learned State counsel, on instructions from ASI Vasu Dev, opposes the bail petition and submits that petitioner has committed a serious offence. He is a habitual offender. She submits that during investigation, statement of one Balbir Singh was recorded and per his version, petitioner earlier was active member of Babbar Khalsa Terrorist Association and many cases were registered against him. He came to India after remaining in Pakistan for 14 years and came out of Jail in 2017. He is now an active member of Khalistan Zindabad Force Terrorist Association. She submits that challan was presented on 31.03.2021 within 90 days from the arrest of petitioner and his co-accused, so there is no requirement to file application for extension of time for investigation.

5. I have heard learned counsel for the parties and gone through the record.

6. In this case, petitioner was arrested on 17.10.2020. Short reply by way of affidavit dated 08.10.2021 of Tushar Gupta, IPS, Assistant Superintendent of Police, Sub Division Garhshankar, District Hoshiarpur on behalf of respondent-

State of Punjab has been filed. Para-17 of the same reveals that petitioner is a habitual offender and the following cases have been registered against him:

- “i. FIR No.76 dated 11.06.2017, under Sections 18/25/61/85 of NDPS Act, P.S. Mahilpur, the petitioner was convicted on 30.07.2018 in this case.*
- ii. FIR No.152 dated 18.10.2010 under Sections 25/54/59 of Arms Act and 3/4/5 of Explosive Act, P.S. Sadar, Hoshiarpur, the petitioner was convicted in this case.*
- iii. FIR No.24 dated 25.07.2010, under Sections 25/54/ 59 of Arms Act, the petitioner was convicted in this case.*
- iv. FIR No.30 dated 16.05.2010, under Sections 302, 34 IPC and 25/54/59 of Arms Act and under Section 120-B of IPC, Section 3/4/5, 17/18/19 of Explosive Act was registered at P.S. Mehtiana, Hoshiarpur, the petitioner was convicted in this case.*
- v. FIR No.204 dated 04.10.2020, under Section 10-B, 121, 153 IPC and 25/54/59 of Arms Act, 17/18 of Explosive Act, P.S. Mahilpur, Hoshiarpur, the petitioner was convicted in this case.”*

7. In the aforesaid circumstances, in the instant case, it is borne out that petitioner is a history-sheeter and in any case, has also been convicted in case under Section 302 IPC. Antecedents of the petitioner do not inspire any confidence. That apart, if released on bail, petitioner may commit further crimes.

8. Considering the antecedents of petitioner and nature and gravity of offence, it can be safely inferred that his release on bail entails a potential risk to public safety and/or safety of specific individuals involved in the case. It is necessary for Courts to consider the impact that the release of such persons on bail will have on witnesses who are yet to be examined and innocent members of the family of the victim who might be the next victims.

9. In the matter at hand, after careful consideration of the facts and circumstances, I am of the considered opinion that the petitioner does not deserve the concession of bail.

10. In the premise, no grounds for grant of bail to the petitioner is made out.

11. Dismissed.

12. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing/ disposal of the instant bail petition alone and learned trial Court shall proceed in accordance with law without being influenced by this order.

13. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 07, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No