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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22706-2022
Date of decision: 07.02.2023

VIJAY MASIH @ KAKU

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. K. S. Dadwal, Advocate
for the petitioner.

Mr. Deepanjay Sharma, DAG, Punjab.

Mr. Ankur Bansal, Advocate
for the complainant.

JAISHREE THAKUR, J.(ORAL)

This is the second petition that has been filed under Section 439 Cr.P.C., for grant of regular bail to the petitioner in case FIR No.0027 dated 10.03.2019 under Sections 302, 148, 149 of the IPC and Sections 25 and 27 of the Arms Act, 1959, registered at Police Station Division No.2, District Police Commissionerate, Jalandhar.

Learned counsel for the petitioner *inter alia* would contend that the petitioner herein has been falsely implicated in the instant case and there is no evidence to tie him to the occurrence. It is argued that the reading of the FIR would reflect that there is no allegation that shots were fired by the petitioner and his brother from behind, meaning thereby, entry of the bullet should have been from the back of the deceased, whereas the post-mortem report is

inconsistent with the said statement. It is contended that even in the final report filed under Section 173 Cr.P.C., there is a recovery of one countrymade pistol but final report does not reflect as to from whom the pistol was recovered. It is argued that no definite opinion has been rendered by the Scientific Officer (Ballistics) as to whether the bullet recovered has been fired through the recovered countrymade pistol. He would further urge that the petitioner has been in custody from 10.03.2019 and has remained in custody for the last about three years and eleven months. The material witnesses i.e. the complainant and the eye-witness have duly been examined and, therefore, the question of the petitioner herein influencing the testimony would not arise. Moreover, it is submitted that out of total 23 prosecution witnesses cited, only 3 have been examined and the trial is likely to take a long time to conclude.

Per contra, learned counsel for the complainant would oppose grant of bail to the petitioner by contending that the petitioner along with his brother has been indicted for offence under Section 302 IPC and, therefore, would not deserve the consession of being enlarged on bail.

On the asking of the Court, learned State counsel would submit that the material witnesses have been examined and 20 prosecution witnesses are yet to be summoned.

I have heard learned counsel for the parties and have also perused the case file.

Keeping in view the fact that the petitioner is in custody from 10.03.2019; material witnesses i.e. the complainant and the eye-witness have already been examined and the trial is likely to take time to conclude, no useful purpose would be served in keeping the petitioner behind bars any longer.

Without commenting the merits of the case, the instant petition is allowed and the petitioner is directed to be released on regular bail subject to his furnishing the personal as well as heavy surety bonds to the satisfaction of concerned trial Court/Duty Magistrate.

However, anything observed or said by this Court is only for the purpose of deciding the instant petition and the same shall have no effect on the merits of the case.

(JAISHREE THAKUR)
JUDGE

07.02.2023
Chetan Thakur

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No