

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

214

CRM-M-34518 of 2021

Date of Decision: 20.02.2023

Kulbir Singh

..... **Petitioner**

Versus

State of Punjab

..... **Respondent****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Bhanu Partap Singh, Advocate
for the petitioner.

Mr. Mohit Chaudhary, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

This is a petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.113 dated 02.10.2011, under Sections 25/54/59 of the Arms Act and Section 120-B IPC and Section 13, 17 of UAP Act, registered at Police Station Maqsudan, District Jalandhar.

Learned counsel for the petitioner submits that the petitioner is in custody since 20.09.2019 and he has been falsely implicated in the case. The challan has already been filed and therefore, no chance of tampering any of prosecution evidence or witness is there and the trial is yet to commence. He has further pointed out that during the course of argument, now charges have been framed on 27.10.2022. He concludes his submissions stating that the petitioner is on bail in other FIRs, except FIR No.90 dated 02.06.2019 under Section 4/5 of the Explosive Activities Prevention Amendment Act, 2008, Police Station Raja Sansi.

Learned counsel for the petitioner has also submitted that he

was earlier declared as proclaimed offender as was not in India at that time due to which he could not attend the trial proceedings continuously.

On the other hand, learned State counsel has produced the custody certificate, according to which, the petitioner is behind the bars for the last 03 years, 05 months and 01 day during the pendency of the trial after filing of supplementary challan on 20.10.2022.

A perusal of the custody certificate shows that apart from FIR No.90 dated 02.06.2019 as stated herein above, the petitioner is on bail in another cases pertaining to offences under Sections 406 and 420 IPC and Section 24 of the Emigration Act, as is evident from the custody certificate produced by learned State counsel.

A perusal of the FIR also makes out a case wherein the petitioner was also declared proclaimed offender on account of his categoric reason admitted by the counsel for the petitioner today as well that he was abroad during the course of trial in that case.

In the instant FIR, the role attributed to the petitioner is that he was running a newspaper in Media Khalistani and is settled at Hong Kong who is also an active member of Babbar Khalsa Dal and Khalistan Zindabad force, which are terrorist organization, who is in contact with youths of Punjab and using the media, has the design to create religious unrest within the State of Punjab conspiring murder of certain eminent persons. The allegations coming forth on perusal of the FIR also pertains to using the mobile phones through internet and deluding them in their talks, by forwarding advancing money through western money gram and offering the greed of sending them abroad. The petitioner has been attributed a specific role of organizing the youth of Punjab and instilling in their minds hatred towards the country and by propagating wrong ideology of separate state,

and thus does not deserve any concession for grant of regular bail before this Court at this stage wherein the trial is at the initial stage of the prosecution. The apprehension is at large in the FIR that in case the network of petitioner Kulbir Singh as well as other co-accused Jagjit Singh and Paramjit Singh titled as 'Khalistani', they may spoil the Punjab by misleading the youth at large.

The Khalistan Movement is a separatist armed Sikh Movement that seeks to make a home for the Sikhs by establishing an independent state of Khalistan in the Punjab region. Punjab's demand for its own country is forced through violent protest by young lads and the killing of a senior Indian government officials in its history. The movement has ideological support from Sikhs living in Canada, the United Kingdom and The United States. By allowing such types of practices, the Preamble of our Constitution of India which speaks for unity and integrity is somewhere at stake and is against public order. Terrorist attacks amounts to an assault of the security of the state and a de facto attack on the nation. The fundamental right under Article 21 of the constitution includes the right to live free from terrorism and it is duty of the government to provide for protocols and structure ensuring the same. And as has been alleged by the learned State counsel, the petitioner is an active member of the Babbar Khalsa Dal and Khalistan Zindabad Force. These organization are declared as terrorist organization by First Schedule of The Unlawful activities (Prevention) Act, 1967. Therefore, these types of anti-society elements needs to be dealt with stern and firm actions.

Furthermore, as has been vehemently argued by the learned state counsel that the petitioner is involved in funding the youth of Punjab for anti-states activities disrupting peace of Punjab. Finance is the lifeblood

of the propagation and fostering of terrorism. Without the access to monetary funds, the terrorists would be unable to recruit persons for carrying out the terrorist acts and obtain arms and ammunition for furthering terrorist activities and to sustain the campaign of terrorism, thus there is a need to curb terrorist activities by freezing their funds and financial assets. Section 17 of the UAPA further defines punishment for raising funds for terrorist act as under:-

“17. Punishment for raising funds for terrorist act.-Whoever, in India or in a foreign country, directly or indirectly, raises or provides funds or collects funds, whether from a legitimate or illegitimate source, from any person or persons or attempts to provide to, or raises or collects funds for any person or persons, knowing that such funds are likely to be used, in full or in part by such person or persons or by a terrorist organization or by a terrorist gang or by an individual terrorist to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Explanation. For the purpose of this section,-

- (a) participating, organising or directing in any of the acts stated therein shall constitute an offence;*
- (b) raising funds shall include raising or collecting or providing funds through production or smuggling or circulation of high quality counterfeit Indian currency; and*
- (c) raising or collecting or providing funds, in any manner for the benefit of, or, to an individual terrorist, terrorist gang or terrorist organization for the purpose not specifically covered under section 15 shall also be construed as an offence.”*

Supreme court in **Union of India vs. Yasmeen Mohammad**

Zahid @Yasmeen,(Crl.) Appeal no. 1199 of 2019 arising out of SLP (Crl.)

convicts" is to be shown and they should be handled with utmost severity.

Be that as it may, without going further into the contents of the FIR, as per the case law relied upon by learned counsel for the petitioner in the case of '**Union of India Vs. K.A. Najeeb**', arising out of **SLP (Crl.) No.11616 of 2019** culminating into **Criminal Appeal No.98 of 2021** is concerned, does not apply to the instant case, as the Hon'ble Apex Court has considered the facts and circumstances of that very case, wherein the petitioner was not involved in other case as can be easily dismissed from the facts and circumstances of the case in hand before this Court wherein the petitioner is involved in number of other cases with specific attribution of role which is likely to be dangerous and can only be tested and examined during the course of evidence in the trial Court wherein the trial as already discussed above, after framing of charges on 27.10.2022.

Another distinction appears before this Court while considering the application of the aforesaid order passed by the Hon'ble Apex Court dated 01.02.2021 in Union of India (supra), distinction is that the said appeal was for cancellation of bail preferred by UOI through National Investigating Agency against an order dated 23.07.2019 of the High Court of Kerala at Ernakulam for the offences under Sections 143, 147, 148, 120-B, 341, 427, 323, 324, 326 506(H), 201, 202, 153A, 212, 307, 149 of the IPC along with Section 3 of the Explosive Substances Act, 1908 and Sections 16, 18, 18-B, 19 and 20 of the Unlawful Activities (Prevention) Act, 1967. The facts are also on perusal found to be totally distinguish and no such specific role as has been elaborated in the said FIR of the case in hand is available therein. Moreover, the consideration while examination the case for cancellation of bail as well as at the time of considering the petition for grant of regular bail, are within the different parameters to be examined.

Hence, the present petition for regular bail is devoid of merits and the same is dismissed looking into the gravity of offences involved.

20.02.2023
D.Bansal

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No