

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

203

**CRM-M No. 27231 of 2022(O&M)
Date of decision : 05.01.2023**

Naginder Singh @ Happy

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Dr. Anmol Rattan Sidhu , Sr. Advocate with
Mr. Harlove Singh Rajput, Advocate,
Mr. G.S.Dhillon, Advocate,
Mr. Baltej Sidhu, Advocate for the petitioner.
Mr. Karunesh Kaushal, Asst.AG, Punjab.
Mr. Arshpreet Khadial, Advocate for the complainant.

RAJESH BHARDWAJ, J.

The petitioner has filed present petition under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No. 50 dated 14.05.2020 registered under Section 302 read with Section 34 of the Indian Penal Code, 1860 (Sections 27, 54, 59 of Arms Act deleted lateron) at Police Station Sadar, Malout, District Sri Muktsar Sahib.

It is contended by the learned Senior counsel for the petitioner that the petitioner and the deceased the uterine brothers. He submits that the alleged occurrence had taken place on 14.05.2020 wherein it was alleged that the petitioner had fired from his licensed revolver on deceased- Talwinder Singh. He has submitted that after investigation, the challan was presented and the charges were framed. During investigation, wife of the petitioner was found innocent and thus was kept in column No. 2. He

further submits that the complainant who is wife of the deceased was partially examined by the trial Court by recording her examination-in-chief and thereafter she went to Canada. He has submitted that this Court granted the interim bail to the petitioner vide order dated 30.08.2022. He submits that the petitioner has admitted that the shot was fired from his licensed revolver which was an accidental one. He further submits that it would be a debatable question whether offence is culpable homicide amounting to murder or otherwise. He has submitted that the petitioner was arrested on 14.05.2020 and at the time of granting interim bail, he had already completed more than 2 years and 3 months of incarceration. He further submits that the complainant has returned from Canada and her cross-examination has also been conducted. He submits that during this period while remaining on interim bail, the petitioner has never misused the concession of interim bail granted to him. He submits that after the death of the husband of the complainant, the complainant is now re-married and is settled in her matrimonial home. He further submits that whether the offence is culpable homicide amounting to murder or not is to be determined by the trial Court and the trial of the case will take sufficient long time and no purpose will be served by keeping the petitioner in custody for such a long time.

Learned counsel for the complainant has opposed the submissions made by learned Senior counsel for the petitioner. He submits that the petitioner being brother of the deceased had strong motive to eliminate him. He has submitted that the complainant has specifically deposed regarding the complicity of the petitioner in the murder of her husband-Talwinder Singh. He submits that the petitioner had fired at the

vital part of body of the deceased and thus he does not deserve the concession of bail.

Learned State counsel has submitted that the petitioner is being prosecuted for the offence under Section 302 and 34 IPC. He submits that the petitioner fired shot from his licensed revolver on the deceased. He has further submitted that as per the custody certificate, the petitioner has remained behind bars for 2 years and 3 months. He has submitted that the wife of the petitioner was declared innocent during the investigation however she has been summoned under Section 319 Cr.P.C and is on anticipatory bail granted by this Court. He has submitted that as per instructions from ASI Manjit Singh, the petitioner has not misused the concession of interim bail. He also submits that the petitioner is not involved in any other criminal case. He further submits that there are 25 prosecution witnesses out of which only one witness i.e. Complainant has been examined.

Heard.

Evidently, the petitioner and the deceased are the brothers. The alleged dispute had taken place in the family. As per case of the prosecution, the shot was fired from the licensed revolver of the petitioner. Whether the offence falls under Section 302 or 304 IPC Part I and Part II would be purely in the domain of the trial Court who would determine the same after appreciation of evidence to be produced before it. There is nothing on record to show that the petitioner has misused the concession of interim bail or he is involved in any other offence. As per statement of learned State counsel the complainant has already been examined. The trial of the case would take sufficient time as 24 witnesses are yet to be examined.

Without commenting anything on merits of the case, I am of the considered view that the petitioner deserves the concession of regular bail. Accordingly, the order dated 30.08.2022 granting interim bail to the petitioner is made absolute, however on his filing fresh Bail/Surety bonds to the satisfaction of trial Court/Duty Magistrate concerned. Nothing stated herein shall be construed as an expression on the merits of the case.

The petition stands allowed.

05.01.2023
Rajeev (rvs)

(RAJESH BHARDWAJ)
JUDGE

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