

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

**CRM-M-38922-2023
Date of Decision: 02.11.2023**

Gurleen Singh Atwal @ Gurbeer Singh @ Ginni

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Navkiran Singh, Advocate
for the petitioner.

Mr. Vipin Pal Yadav, Addl. A.G., Punjab.

HARSH BUNGER J.

1. This is a second petition filed under Section 439 of the Code of Criminal Procedure on behalf of petitioner (Gurleen Singh Atwal @ Gurbeer Singh @ Ginni) for grant of regular bail in case bearing FIR No.137 dated 01.11.2022, under Sections 148, 149, 186, 307 & 353 of the Indian Penal Code and Sections 25 & 27 of the Arms Act, registered at Police Station Bhogpur, District Jalandhar Rural.

2. Upon issuance of notice, short reply by way of affidavit dated 29.09.2023 of Mr. Vijay Kanwar Paul, P.P.S., Deputy Superintendent of Police, Sub Division Adampur, District Jalandhar (Rural) and custody certificate dated 04.10.2023 of the petitioner have been filed on behalf of State of Punjab, which are already on record.

3. Briefly, the aforesaid case FIR was registered on the statement of Surinder Kumar, Station House Officer, Phillaur, Jalandhar Rural, wherein he stated that on 01.11.2022, he, along with his fellow employees, was present near H.P. Hamara Petrol Pump at Village Chak Jhandu, Police Station Bhogpur, in search of the accused persons involved in another case FIR No.315 dated 28.10.2022, registered under Sections 216-A & 379-B of the Indian Penal Code and Section 25 of the Arms Act, at Police Station Phillaur, District Jalandhar, whereby the officials of Delhi Special Cell also accompanied them and they committed a raid on a house situated at the backside of H.P. Hamara Petrol Pump, whereupon 5-6 unknown persons started firing from inside the house at the police party with the intention to kill them and to cause hindrance in the government duty. As per the FIR, two shots were fired by Surinder Kumar, Station House Officer from his service pistol. It is further stated in the FIR that three unknown persons while firing shots, started running from the backside of house towards the Sugarcane fields and they were followed by the police party and three other persons started running towards the Sugarcane fields from the second gate of the house, who were followed by Sub Inspector Rohit Tomar along with fellow officials; and the Station House Officer, Police Station Bhogpur was sent a message to reach at the spot. It is further mentioned in the FIR that with the help of drone camera, tractor, ropes, binoculars etc., the Sugarcane fields were searched and the three unknown persons, upon seeing the police party, tried to run away, however, they were apprehended by the police. Upon enquiry, the said persons disclosed their names as Sanjiv Kumar @ Nanu s/o Kulwinder Singh r/o Village Maliya, Police Station Kartarpur, District Jalandhar, Sandeep Kumar @ Sabi s/o Buta Singh r/o Dheerpur,

Police Station Kartarpur, District Jalandhar and Gurbeer Singh @ Ginni (petitioner) s/o Manjit Singh r/o Khurdpur, Police Station Adampur, District Jalandhar. According to the FIR, upon search of the aforesaid apprehended persons, arms were recovered from them. A .32 bore pistol along with magazine containing three live cartridges (.32 bore) were recovered from the petitioner (Gurbeer Singh @ Ginni).

4. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the instant case. It is contended by learned counsel for the petitioner that the FIR in question has been wrongly registered under Section 307 of the Indian Penal Code as no one has been injured in this case. It is submitted that the alleged pistol shown to have been recovered from the petitioner has also been foisted upon him and there is no Forensic Science Laboratory Report available on record to show that the alleged recovered pistol was actually used for firing in the instant case.

5. Learned counsel for the petitioner submits that the petitioner was arrested on 01.11.2022 and since then he is in custody, i.e. for almost one year. It is further submitted that investigation in the case is complete, challan was presented on 16.01.2023, thereafter, the case was committed to the Sessions Court on 16.02.2023, where the charges were framed on 30.05.2023. It is stated that out of the total nineteen prosecution witnesses, no one has been examined by now, hence trial in the case is likely to take long time to conclude and no useful purpose would be served with further incarceration of the petitioner. Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court. Learned counsel further submits that the

petitioner is also willing to furnish security in the form of Fixed Deposit Receipt (F.D.R.) before the concerned Court, so as to ensure his presence before the Court on each and every date of hearing. Accordingly, prayer for grant of regular bail is made.

7. Per contra, learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. It is submitted that the petitioner was a part of the gang, who had fired on the police party and one pistol and live cartridges were recovered from him. It is further submitted that during the course of investigation, the petitioner along with other co-accused had suffered disclosure statements wherein they had further named one Vijay Kumar s/o Dalvir @ Toti, who is stated to have run away from the spot, and accordingly, he has been arrayed as a co-accused in the FIR in question vide DDR No.30 dated 07.11.2022, however, he is yet to be arrested. Learned State counsel contends that the petitioner does not have clean antecedents as he is also involved in two more cases, being FIR No.261 dated 14.10.2017 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station Adampur, Jalandhar and FIR No.6 dated 21.01.2015, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station Adampur, Jalandhar, however, he stands acquitted in FIR No.6 dated 21.01.2015. Learned State counsel submits that in case petitioner is released on bail, he might influence the witnesses and also abscond and delay the trial. Accordingly, prayer for dismissal of the instant petition has been made.

8. However, learned State counsel has not disputed the facts that no one was injured in the alleged occurrence and the petitioner has been in

custody since 01.11.2022. It is also not disputed that investigation in the case is complete, charges have been framed on 30.05.2023 and out of total 19 prosecution witnesses, no one has been examined by now.

9. Learned counsel for the petitioner, in rebuttal, has relied upon the judgment of Hon'ble Supreme Court in "***Maulana Mohd. Amir Rashadi vs. State of U.P. and another***", 2012(2) SCC 382 to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment is reproduced herein below :-

"As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc."

10. I have heard learned counsel for the parties and perused the paper book as well as the short reply and custody certificate of the petitioner.

11. In this case, the petitioner is in custody since 01.11.2022, i.e. for almost one year. Further, although he is stated to have been involved in two more cases, being FIR No.261 dated 14.10.2017 and FIR No.6 dated 21.01.2015, however, he already stands acquitted in one of these cases, i.e. FIR No.6 dated 21.01.2015. Concededly, no one has been injured in this case; the investigation in case is complete, challan stands presented on 16.01.2023 and even charges have been framed on 30.05.2023. As per the reply, total nineteen prosecution witnesses were cited in the instant case,

however, no one has been examined till date, thus trial in the case is likely to take some time to conclude. Considering the totality of circumstances, in my considered view, petitioner would be entitled to regular bail.

12. So far as the apprehension expressed by learned State counsel that the witnesses could be influenced by the petitioner, suffice it to state that in the event of any such conduct, the prosecution can always approach the competent Court for cancellation of bail. Accordingly, it is observed that the State/Prosecuting Agency/State police shall be at liberty to observe the behaviour of the petitioner during the bail period, and in case it feels that the petitioner is indulging in influencing any of the witnesses or tampering with the prosecution evidence in any manner or otherwise causing interference with the progress of trial, it shall be open for the State/Prosecuting Agency/State police to move to the trial Court for cancellation of the bail, which shall be decided by the trial Court on merits.

13. Keeping in view the aforementioned circumstances, the present petition is allowed and the petitioner is ordered to be released on regular bail (if not required in any other case), subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The petitioner shall also appear

before the concerned Police Station/Station House Officer on every alternate Monday till the conclusion of trial.

14. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.1,00,000/- and submit the same with the trial Court. The same would be liable to be forfeited as per law, in case the petitioner remains absent from trial without any sufficient cause.

15. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

16. The petition is accordingly disposed of.

17. All pending application(s), if any, shall also stand closed.

02.11.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No