

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

(217)

CRM-M-39516-2023

Date of decision: - 21.08.2023

Davinder Singh**....Petitioner****Versus****State of Punjab****.....Respondent****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Amandeep Singh Maniase, Advocate,
for the petitioner.

Mr. Rohit Bansal, Sr. DAG, Punjab.

VIKAS BAHL, J. (ORAL)

1. This is the third bail application under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.37 dated 11.04.2022, registered under Sections 302 and 34 IPC (offence reduced to Section 304 IPC) and Sections 25 & 27 of the Arms Act, at Police Station Sekhwan, Police District Batala, District Gurdaspur.

2. Learned counsel for the petitioner has submitted that the present case has been registered on the statement of Baldev Singh son of Bachan Singh, who is the father of the deceased Manjinder Singh and in the FIR, it has been stated by the said Baldev Singh that on 10.04.2022, his cousin Ajit Singh had informed him on the phone that one Sahil Sharma had called and told that someone had fired a gun shot at Manjinder Singh during a quarrel and that he had been taken to the

hospital. It is further alleged in the FIR that the complainant came to know that Ajay @ Prontha had a quarrel with some persons and he had called Manjinder Singh (deceased) along with some other boys, to the place, where the quarrel had taken place and there some unknown persons had shot Manjinder Singh. It is submitted that the petitioner was not named in the FIR and a supplementary statement dated 17.04.2022 (Annexure P-2) was recorded by the complainant Baldev Singh and a perusal of the said statement would show that Sahil Sharma (PW-5) and Manpreet Singh @ Sabi (PW-4) were the eye witnesses in the present case, whereas, the complainant was not an eye witness. It is contended that even as per the version given in the supplementary statement dated 17.04.2022, deceased Manjinder Singh, petitioner as well as co-accused Malkeet Singh all belonged to the party of Ajay Masih @ Prontha and were on the same side and it was the opposite party who had started throwing brick bats towards the petitioner and the deceased and that the fire shot was to save themselves. It is further submitted that the eye witnesses Manpreet Singh and Sahil Sharma have been examined as PW-4 and PW-5, respectively and both the said two witnesses have specifically stated in their examination-in-chief that they do not know how Manjinder Singh had received the firearm injury and as to who was the person, who inflicted the said injury and that the said witnesses have been declared hostile.

3. Learned counsel for the petitioner has submitted that the complainant Baldev Singh, who is the father of the deceased, has been examined as PW-1 and even from his examination-in-chief, it is apparent

that he was not an eye witness and he had received the information from Ajit Singh, who had been informed by Sahil Sharma, about the incident and as per his evidence, Manjinder Singh was accidentally injured and the deceased belonged to the same party as the petitioner and co-accused Malkeet Singh, who were being attacked with brick bats. It is further submitted that since the eye witnesses i.e., PW4 and PW5 have not supported the case of the prosecution, thus, there is every likelihood that the petitioner would be acquitted and that the petitioner is in custody since 18.04.2022 and investigation is complete and challan has been presented and there are 30 prosecution witnesses, out of which, 14 witnesses are yet to be examined and thus, trial is likely to take time. It is contended that the first bail application was dismissed as withdrawn on 14.09.2022 and the second bail application was dismissed as withdrawn, on 04.08.2023 with liberty to file a fresh petition after giving full and better particulars, thus, in effect the present petition is the second petition for regular bail. It is further submitted that after the passing of the order dated 14.09.2022, material witnesses have been examined on 28.09.2022 and 17.01.2023 and as the two eye witnesses have not supported the case of the prosecution, the same entitles the petitioner to file the present petition for regular bail.

4. Learned State counsel, on the other hand, has opposed the present petition for grant of regular bail and has submitted that the petitioner is involved in one more case bearing FIR No.17 dated 25.02.2023 and that the petitioner was named in the supplementary statement of Baldev Singh dated 17.04.2022, who even in his

examination-in-chief has reiterated the fact that when Malkeet Singh was trying to snatch the pistol from the petitioner Davinder Singh, it had accidentally hit Manjinder Singh and thus, it was the petitioner and the co-accused Malkeet Singh who were the prime accused persons in the case.

5. Learned counsel for the petitioner in rebuttal has submitted that as far as the FIR No.17 dated 25.02.2023 is concerned, the petitioner has been discharged on 01.05.2023, which fact is apparent from the custody certificate itself and has further relied upon the judgment of Hon'ble Supreme Court in “**Maulana Mohd. Amir Rashadi Vs. State of U.P. and another**”, reported as 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 hereinbelow:-

“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.”

6. This Court has heard the learned counsel for the parties and has perused the paper book.

7. The FIR in the present case was registered on the statement of Baldev Singh on 11.04.2022 against unknown persons. A perusal of the said FIR would show that complainant Baldev Singh was not an eye

witness and he had got information about the death of his son from Ajit Singh, who had earlier received the said information from the eye witness Sahil Sharma. The said Sahil Sharma has been examined as PW-5 on 17.01.2023 (at page 28 of the paper-book) and during his examination-in-chief, he has specifically stated that he is not aware as to who had given the injury to the deceased Manjinder Singh. As per the supplementary statement of complainant Baldev Singh recorded on 17.04.2022, it is apparent that in addition to Sahil Sharma, one Manpreet Singh @ Sabhi was also an eye-witness. The said Manpreet Singh @ Sabhi has also been examined as PW-4 and has given the evidence on the same lines as PW-5 and has not supported the case of the prosecution. Even as per the case of the prosecution, the petitioner Davinder Singh, Manjinder Singh (deceased), Malkeet Singh (co-accused) and Ajay Masih @ Prontha were all on the same side and they had a dispute with Dilbagh Singh. The petitioner is in custody since 18.04.2022 and the investigation is complete and challan has also been presented and out of 30 witnesses, 14 witnesses are yet to be examined and thus, the trial is likely to take time

8. Keeping in view the above said facts and circumstances and also in view of the law laid down in the above-said judgment, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case.

9. However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses,

then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

10. Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case.

August 21, 2023
naresh.k

(VIKAS BAHL)
JUDGE

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