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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-49603-2021 (O&M)
Date of Decision: 06.07.2023

Gurpreet Singh @ Gautam

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. G.K. Mann, Senior Advocate with
Ms. Komal Balain, Advocate and
Mr. Anmol Jiwan Singh Gill, Advocate, for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in FIR No. 0193 dated 30.10.2021, under Sections 336, 506, 148, 149 IPC and Section 25/54/59 of Arms Act, registered at Police Station Majitha Road, District Police Commissionerate Amritsar.

2. Learned Senior Counsel for the petitioner has submitted that it is a case where the allegations on the basis of which the FIR was lodged that on the statement of one complainant Rajat Kumar @ Kaka by stating that he works at utensil shop at Rambagh and he was sleeping in his house after having meal and time would be about 11.45 p.m that when he heard a fire shot

outside his house and he went on the roof top and saw that there were two motorcycles and one white Activa in the street and six young men were on them, out of them one young man was their neighbour namely Gurpeet Singh @ Gautam (Petitioner) was firing in the air and threatening him by taking his name that he has come out of the jail and now he will see him and there was another young man namely Yash Sabharwal who was also firing in the air apart from other four persons. As per the allegations, they fired about 15-20 shots in the air. The grudge was that in the month of April, 2019, there was murder of one Ashu Masih who was his nephew from his collaterals. Gautam (petitioner) had come out of the jail 1½ months back and was pressuring the complainant for compromise but he did not agree for the same.

3. Learned Senior Counsel submitted that this Court in the present case while issuing notice of motion on 26.11.2021 had granted interim bail to the petitioner subject to his joining of investigation. She submitted that thereafter the petitioner, in fact, had gone to the police authorities for joining of the investigation but was not joined and later on the petitioner was in fact permitted to join the investigation and he joined investigation and cooperated with the investigation process. However, when an affidavit was filed by the Assistant Commissioner of Police it was so stated that although the petitioner has joined the investigation on 03.12.2021 but he has not cooperated with the investigation process because he did not disclose the particulars of the weapon and the weapon which was used in the offence was not got recovered from him because he did not disclose the details of the same. Learned Senior Counsel further submitted that the petitioner was in fact falsely implicated in the present case and there was no question of recovery of

any firearm from the petitioner and even otherwise also it was a case of no injury to anybody and even allegedly the firearms were shot in the air even as per the prosecution. She submitted that be that as it may, the interim protection was granted to the petitioner on 26.11.2021 which is more than 1 year and 7 months ago and the petitioner has already joined investigation and therefore he may be considered for the grant of anticipatory bail by confirming the aforesaid order.

4. On the other hand, Mr. Sarabjit Singh Cheema, DAG, Punjab has submitted that in pursuance of the orders passed by this Court on 18.04.2023, the Assistant Commissioner of Police, North, Amritsar is present in the Court to clarify the contents of his affidavit dated 16.01.2022. He submitted on instructions that the petitioner had come to the house of the complainant and had fired rounds of fire in the air and as much as 21 rounds were recovered but no firearm has been so recovered from the petitioner but at the time of investigation, he had been taking contradictory stands. Firstly, he stated that he has returned the firearm to one Yash and on the other hand, he stated that he has sold to someone else for an amount of Rs. 40,000/-. He submitted that recovery of the weapon is essential for further investigation of the case and therefore has opposed the grant of anticipatory bail.

5. I have heard the learned counsel for the parties.

6. In pursuance of the orders passed by this Court on 18.04.2023, the Assistant Commissioner of Police is present and he has also himself explained the position. Therefore, no further presence of the Assistant Commissioner of Police is required. As per the learned counsel for both the

parties, the petitioner has in fact now joined investigation and even the same position has been so stated by the Assistant Commissioner of Police in the affidavit. The only question which would remain here would be as to whether the petitioner in the facts and circumstances of the present case can be denied anticipatory bail on the ground that as per the police, he has not cooperated with the investigation process by non-recovery of the weapon. On the other hand, learned Senior Counsel appearing on behalf of the petitioner submitted that the petitioner was rather falsely implicated in the present case and therefore, there was no question of recovery of any weapon from the petitioner and therefore has prayed for the confirmation of the order of the anticipatory bail.

7. Interim protection was granted by this Court more than 1 year and 7 months ago and the petitioner has already joined investigation. The stand which has been taken by the State counsel with regard to conflicting statements made by the petitioner can always be seen at the time of trial but the question would be as to whether the custodial interrogation of the petitioner would be required once he has been granted interim protection for more than 1 year and 7 months ago and when specifically the stand of the petitioner is that he has been falsely implicated in the present case. This Court is of the considered view that considering the totality of the facts and circumstances of the present case where it is a case of no injury to anybody and the petitioner has already joined investigation, the mere fact that the contradictory stand has been taken by the petitioner before the police authority cannot become a ground for denial of anticipatory bail to the petitioner.

8. In view of the above, the present petition is allowed. Order dated 26.11.2021 is hereby made absolute. The petitioner shall continue to join investigation as and when required by Investigating Officer.

06.07.2023

rakesh

Whether speaking

Whether reportable

(JASGURPREET SINGH PURI)

JUDGE

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:

Yes/No

Yes/No