

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

Reserved on 22.12.2022

**CRM-M No.50435 of 2021 (O&M)
Date of Decision: 10.01.2023**

Gurdial Singh

.....Petitioner

Vs

State of Punjab

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Amit Arora, Advocate
for the petitioner.

Mr. Sanjeev Soni, Addl.,A.G., Punjab.

RAJ MOHAN SINGH, J.

[1]. The petitioner seeks grant of regular bail under Section 439 Cr.P.C in his second attempt in case bearing FIR No.5 dated 09.01.2018 registered under Sections 302, 307, 506, 336, 148, 149 IPC and Section 25 of the Arms Act at Police Station Valtaha, District Tarn Taran.

[2]. Earlier CRM-M No.18185 of 2020 was got dismissed as withdrawn on 29.07.2020.

[3]. The FIR was registered at the instance of Gurpal Singh to the effect that the complainant is a Veterinary Inspector. The house of the petitioner is situated adjoining to the house of the complainant. The petitioner has constructed a new kothi and has also installed main gate by adjoining the same with the main gate of the house of the complainant by extending the pillar towards the street. Due to the aforesaid construction, ingress and egress by tractor-trolley and vehicle to the house of the complainant became difficult. The complainant made efforts by asking the respectables of the village to make the petitioner understand, but of no avail. Even the effort of the complainant to install his gate on the other side of the street was opposed by the petitioner by extending threats of criminal intimidation. The respectables including Sukhwinder Singh, Kuldeep Singh, Davinder Singh, Sukhdev Singh and Joravar Singh were present in the house of the complainant and were talking to each other. In the meanwhile, the petitioner with prior preparation along with other persons called him from outside. The accused started throwing bricks and stones from the roof of the house. At the same time, the petitioner fired a shot from his .32 bore pistol upon the complainant with an intention to kill him. The complainant got down and the fire crossed over him. The

petitioner fired one more shot from his pistol, which hit the head of Sukhdev Singh and he fell down at the spot. Then, Harmanpreet Kaur daughter of the petitioner fired a shot by taking pistol from his father, which hit the left thigh of Joravar Singh. At the same time, Jaskaran Singh fired a shot from his pistol, which hit left knee of Joravar Singh. Bhola Singh fired a shot from his .315 bore rifle, which crossed over Joravar Singh while he was laying down. Bhola Singh continuously fired in the air from his .315 bore rifle. Babbu fired two shots with his pistol upon Joravar Singh. Deban Pradhan, Sibbu and 3-4 unknown persons who were having datars and kirpans throw bricks and stones in the house of the complainant. The complainant along with other respectable persons and family persons saved themselves by going inside the house. The accused ran away from the spot along with their respective weapons by raising *lalkara* and giving threats. On stopping of firing and stones pelting, the complainant, Davinder Singh, Kuldeep Singh and Sukhwinder Singh arranged the vehicle and took the injured persons to Civil Hospital, Patti. On seeing the critical condition of the injured persons, the Doctor referred them further and the complainant party took Sukhdev Singh and Joravar Singh to Guru Nanak Dev Hospital, Tarn Taran. Sukhdev Singh succumbed to injuries outside the hospital and Joravar Singh was admitted in the hospital. After leaving Davinder Singh and

Kuldeep Singh near the dead body of Sukhdev Singh, the complainant and Sukhwinder Singh went to the police station and got the FIR registered. The occurrence took place due to the dispute regarding installation of gate in the street by extending the pillar. The respectable persons had collected in order to resolve the dispute, but the occurrence took place, in which the petitioner and other accused persons opened fire upon the complainant party with intention to commit murder, resulting in death of Sukhdev Singh and causing injuries to Joravar Singh. The complainant and his companions have witnessed the entire occurrence.

[4]. As per allegations in the FIR, the petitioner was armed with .32 bore pistol and opened fire directly towards the complainant unsuccessfully as the complainant timely bent down and the gun shot passed over his head. The petitioner again fired another gun shot, which hit on the head of Sukhdev Singh son of Kuldeep Singh and Sukhdev Singh fell down at the spot. Thereafter, Harmanpreet Kaur daughter of the petitioner fired a gun shot by snatching the pistol from the petitioner, which hit in the left thigh of Joravar Singh. Gun shot fired by Jaskaran Singh hit above left knee of Joravar Singh. Gun shot fired by Bhola Singh did not hit Joravar Singh while he was laying down. Bhola Singh kept on firing in the air. Babbu fired two gun shots upon Joravar Singh. Deban Pradhan, Siblu and

3-4 unidentified persons started brick-batting. The injury attributed to the petitioner is a gun shot injury with .32 bore pistol, which hit on the head of Sukhdev Singh, resulting in his death.

[5]. As per report under Section 173 Cr.P.C, the Investigating Officer recovered the bloodstained earth from the spot, besides one bullet .32 bore, bricks, stones, 5 empty cartridges of .32 bore and 3 empty cartridges of .315 bore from the roof of the house of the petitioner. The statements of Kuldeep Singh son of Gurjant Singh and Davinder Singh son of Balkar Singh were recorded.

[6]. On 25.01.2018, four days remand of the petitioner and Bhola Singh was obtained. During remand, the petitioner had confessed that .32 bore pistol with which he had fired shots upon the complainant and Sukhdev Singh was handed over to his nephew Gursharan Singh @ Babbu on the same day. Sawinder Singh @ Bhola also confessed that .315 bore rifle with which he had fired shots was handed over to his nephew Gursharan Singh @ Babbu on the same day. Statement of Joravar Singh was also recorded by the Investigating Officer after taking opinion of the Doctor. In the statement of Joravar Singh, name of Vikramjit Nanda came to fore, who was in the category of unknown persons. On 01.02.2018, the petitioner and Sawinder Singh @ Bhola were produced in the Court and

they were sent to judicial custody.

[7]. According to the investigation, on 20.03.2018, an inquiry report was received, in which, SP Investigation, Tarn Taran had declared Harmanpreet Kaur innocent. On the basis of said report, one application was moved in the Court for release of Harmanpreet Kaur from custody. One parcel of plastic box having one .32 bore bullet sealed with seal HS, one parcel of plastic box having 5 empty cartridges sealed with seal HS, one parcel of plastic box having 3 empty cartridges of .315 bore sealed with seal HS along with sample seals and one complete docket from the office of Forensic Science Laboratory, Chandigarh, one parcel of plastic box having earth stained with blood of deceased Sukhdev Singh, one parcel having clothes of deceased Sukhdev Singh sealed with seal HS along with sample seal and complete docket and one parcel of bullet extracted by the doctor from the head of deceased Sukhdev Singh sealed with seal of doctor got deposited in Forensic Science Laboratory, Mohali for inspection. The challan was prepared on 04.04.2018.

[8]. At the time of filing of the challan, arrest of some other accused was pending and therefore, investigation qua them was also pending and on completion of the same and on receipt of the inspection report from FSL, the challan was to be submitted.

[9]. Learned counsel for the petitioner submitted that .32

bore pistol allegedly used by the petitioner was never subjected to FSL and there is no ballistic report along with the FSL report in respect of matching configuration of the firearm viz-a-viz the cartridges.

[10]. In respect of recovery of .32 bore pistol used by the petitioner, para No.7 of the reply would indicate that the petitioner voluntarily got recovered .32 bore pistol used by him at the time of commission of the offence and a separate recovery memo was prepared by the Investigating Officer, showing that the weapon was recovered from the petitioner, but inadvertently due to typographical mistake, .315 bore pistol was mentioned in the supplementary report under Section 173(8) Cr.P.C instead of .32 bore pistol, which was recovered from the petitioner.

[11]. Learned State counsel by relying upon recovery memo dated 01.02.2019 submitted that the country-made pistol .32 bore was recovered from the petitioner.

[12]. Learned counsel for the petitioner submitted that even after recovery of .32 bore pistol, the same was not subjected to any ballistic report in order to ascertain the matching configuration of the weapon viz-a-viz the cartridges allegedly recovered from the spot. No ballistic report has been attached with the supplementary challan. The petitioner is in custody since 01.02.2019 and has undergone incarceration of more than

4 years and 11 months.

[13]. On 12.10.2022, following order was passed:-

“Short reply by way of affidavit of Joginder Singh, Deputy Superintendent of Police, PBI, Economic Offences & Cyber Crime, Tarn Taran, District Tarn Taran has been filed along with FSL report and copy of recovery memo. The same is taken on record.

In view of para No.7 of the reply, the prosecution has explained that during course of investigation, the petitioner voluntarily got recovered the weapon i.e. .32 bore pistol used by him.

Let a ballistic report along with FSL report, if any in respect of matching configuration of the fire arm vis-a-vis the cartridges be placed on record.

Adjourned to 24.11.2022.”

[14]. Thereafter, on 24.11.2022, learned State counsel sought more time to do the needful in the context of order dated 12.10.2022. The order was not complied with and the case was heard on 22.12.2022.

[15]. Learned counsel for the petitioner submitted that the deceased Sukhdev Singh died due to accidental shot fired from one of the members of the complainant party itself. In fact, recovery from the petitioner is tainted as the weapon was never subjected to ballistic examination. The alleged recovery of empty cartridges would not advance the case of the prosecution. Accused Harmanpreet Kaur, Babbu, Deban Pradhan and Siblu have already been declared innocent by the

police after detailed inquiry conducted by the higher officers. Vikramjeet Nanda has also been declared innocent in the inquiry. The complainant has also given clean cheat to Jaskaran Singh son of Sukhwinder Singh. The statement of the complainant has been recorded as PW-1 on 18.10.2021. On the basis of statement of the complainant and on the basis of substantial period undergone by Jaskaran Singh and Sawinder Singh @ Bhola, both were granted regular bail by the High Court vide order dated 08.11.2021 passed in CRM-M No.23878 of 2020 and CRM-M No.5283 of 2020 respectively. The petitioner was armed with .32 bore pistol and is alleged to have fired at Sukhdev Singh, who died thereafter.

[16]. Keeping in view the allegations on record, the petitioner is not entitled to any indulgence for grant of regular bail. This petition is accordingly dismissed. However, the trial Court shall make every endeavour to expedite the trial of the case.

10.01.2023

*Prince***(RAJ MOHAN SINGH)
JUDGE****Whether Reasoned/Speaking****Yes/No****Whether Reportable****Yes/No**