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

CRM-M-58430-2022

Date of decision : 06.01.2023

Dilbagh Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mrs. G.K. Mann, Sr. Advocate with
Mr. Anmol Jeevan Singh Gill, Advocate for the petitioner.

Mr. Alankar Narula, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is the second petition filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in FIR No.136 dated 17.07.2018 registered under Sections 302/341/506/34 of Indian Penal Code, 1860 and Sections 25/27/54/59 of the Arms Act at Police Station Lopoke, District Amritsar Rural.

Learned Senior Counsel for the petitioner has submitted that in the present case, the petitioner has been in custody since 26.07.2018 (more than 4 years and 5 months) and there are 23 prosecution witnesses, out of which, only 8 prosecution witnesses have been examined as yet and thus, the conclusion of trial is likely to take time. It is further submitted that earlier bail application of the petitioner was withdrawn at that stage on 17.02.2022 with liberty to file a fresh petition after the material witnesses have been examined. It is contended that in the present case, two main

material witnesses are complainant-Harbir Singh and Pargat Singh who both have been examined as PW1 and PW2 respectively and cross-examined. It is further contended that six other witnesses have been examined and only one known official witness i.e. Kulwinder Singh is now left who had only identified the dead body and thus, in effect, all the material witnesses have been examined. It is argued that in the present case, even as per the version given in the FIR, the incident had taken place in front of the house of the present petitioner and it has been stated that only one injury was caused by the petitioner to the deceased as per the case of the prosecution. It is further argued that in the said circumstances, even in case, the case of the prosecution is taken on face value, it cannot be said that the petitioner had the intention to kill the deceased. It is also submitted that the petitioner undertakes not to go close to the house of the complainant if he is released on bail.

On the other hand, learned State Counsel has opposed the present petition for grant of regular bail to the petitioner and has submitted that as per the case of the prosecution, the petitioner is the main accused and it is the firearm injury given by the petitioner which was inflicted on the back of the shoulder of the deceased and it is on account of the said injury that the deceased had died.

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

In the present case, the petitioner has been in custody since 26.07.2018 (more than 4 years and 5 months) and out of 23 prosecution witnesses, only 8 prosecution witnesses have been examined as yet and thus,

the conclusion of trial is likely to take time. The earlier bail application of the petitioner was withdrawn at that stage on 17.02.2022 with liberty to the petitioner to file a fresh petition after the material witnesses had been examined. It is not in dispute that the material witnesses have been examined.

Keeping in view the abovesaid facts and circumstances, more so, the custody of the petitioner, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate, subject to him not being required in any other case.

The petitioner would also file an undertaking before the Court that he would not go within the radius of 500 meters of the house of the complainant, within a period of two weeks after his release.

However, it is made clear that in case, any act is done by the petitioner to threaten the complainant or any of the witnesses and he violates any other conditions mentioned above, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

06.01.2023*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**