

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

2024:PHHC:053421

211 CRM-M-11709-2019 (O&M)
DECIDED ON: 16.04.2024

CHARANJIT SINGH SHARMA ... PETITIONER

VERSUS

STATE OF PUNJABRESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. R.S. Rai, Sr. Advocate with
Mr. P.S. Sekhon, Advocate,
Mr. Anurag Arora, Advocate,
Mr. Rehan Gupta, Advocate and
Mr. Gagandeep Singh Gill, Advocate
for the petitioner.

Mr. Jasdeep Singh Gill, Addl. AG, Punjab.

SANDEEP MOUDGIL, J.

1. The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked seeking regular bail to the petitioner in case FIR No. 130, dated 21.10.2015 (Annexure P-1), under Sections 302, 307, 34 IPC (Offence under Sections 201, 218 and 120-B IPC added later on) and Sections 25 and 27 of Arms Act, 1959 (under Sections 166-A, 194, 195 and 109 added vide order dated 10.03.2021) registered at Police Station Bajakhana, District Faridkot.

2. The contents of the FIR reads as under:-

Summary of Case F.I.R. No. 130 dated 21.10.2015. U/s. 302, 307, 34 IPC, 25/27/54/59 Arms Act - Police Station Bajakhana, District Faridkot:- "From Director, Bureau of Investigation-Cum-Chairman, Special Investigation Team, Punjab, Chandigarh. To The Senior Superintendent of Police, Faridkot. No. 318/PA/DIR/BOI Dated: Chandigarh, the 21.10.2015. Subject: Regarding registration of F.I.R. in

connection with firing incident took place at village Behbal, Police Station Bajakhana, District Faridkot. 1. Kindly pay your kind attention to the subject cited above. 2. The Director General of Police, Punjab issued order No. 1306/Crime-E-3 dated 14.10.2015, on which, F.I.R. dated 12.10.2015 - Police Station Bajakhana, District Faridkot registered for committing disrespect to Sri Guru Granth Sahib Ji and hurting the religious sentiments of people. A Special Committee, comprising of Investigation following officers, formed for investigation of said case: i) Sh. Iqbal Preet Singh Sahota, IPS, Director, Bureau of Investigation, Punjab (Chairman): ii) Sh. Amar Singh Chahal, I.P.S., D.I.G., Ferozepur Range, Ferozepur (Member) ; iii) Sh. R.S. Khatra, IPS, D.I.G. Bathinda Range, Bathinda (Member). 3. The Special Investigation Team arrived at Faridkot on 16.10.2015 and | conducted investigation. The circumstances regarding Police firing at village Behbal examined and relevant record gone through. 4. It is revealed by Special Investigation Team that two persons, namely Krishan Bhagwan Singh son of Mohinder Singh & Gurjit Singh son of Sadhu Singh had died during Police firing. The said Police party was deputed under observation of Sh. Charanjit Singh, S.S.P., Moga. It reveals from Post- mortem report of said deceased persons that they received gunshot. It also transpired from examination of circumstances that some people are of the opinion that a murder case may be registered in this matter and further investigation may be conducted. Hence the case requires to be deeply investigated. As such, you are hereby directed that an F.I.R. Us.302, 307, 34 IPC, 25, 27, 54, 59 Arms Act be registered and thorough investigation be conducted for bringing actual facts to notice, so that due legal action may be taken against accused and justice may be provided. Special Investigation Team will supervise investigation in this case. Sd/- Iqbal Preet Singh Sahota, Director, Bureau of investigation- Cum-Chairman, Special Investigation Team, Punjab, Chandigarh. S.H.O., Police Station Bajakhana, for necessary action. Sd/- Sukhminder Singh Maan, Senior Superintendent of Police, Faridkot. Dated: 21.10.2015. Today at Police Station: On receipt of above noted letter, the above said case under above mentioned offence is registered against above given accused. A copy of F.I.R. alongwith original letter is retained by me, S.I./S.H.O. for conducting further investigation. Special reports are being sent to Ld. Illaga Magistrate and senior officers through H.C. Harbhagwan Singh 847. Intimation to Police Control Room is being sent separately. Entered vide DDR No.29 at 9.20 P.M.

3. Mr. R.S. Rai, learned Senior Counsel for the petitioner has contended that he has been falsely implicated in the present case. He has

further contended that on 07.09.2015 order was passed by the Deputy Commissioner, Faridkot, imposing restriction under Section 144 Cr.P.C. from 08.09.2015 till 15.11.2015. It is submitted on behalf of the petitioner that on the direction of Sh. Paramraj Singh Umranangal IPS, the then Commissioner of Police, Ludhiana, he reached Bargadi where an incident of sacrilege took place and miscreants, armed with lethal weapons has surrounded the police post situated at Bargadi. It is further submitted that the protesters, who were in large number, had attacked the police personnels, who were on duty and also damaged the police vehicles and several police officials were also injured. Thereafter an FIR No. 129, dated 14.10.2015, under Sections 25 and 27 of Arms Act and Sections 3/4 of Prevention of damage to Public Property Act, was also got registered. The assertion is that the State government appointed Inquiry Commission headed by Justice Jora Singh (Retired), to inquire into the incident of sacrilege and police firing on 14.10.2015 in Kotkapura and village Behbal Kalan, who gave his report on 30.06.2016 and in the report given by the afore-said Commission, no role was attributed to the present petitioner. Moreover, in the affidavit dated 15.02.2019 submitted by Satinder Singh, SSP, before this Court, no direct role has been attributed to the present petitioner in the alleged occurrence in fact, Inspector Pardeep Singh along with HC Gurnam Singh had taken escort Gypsy of the present petitioner to a house at Faridkot-Kotkapura road, where two gun shots were fired on the said Gypsy for fabricating the evidence and in the said affidavit, it is clearly mentioned that Beant Singh got recorded his statement, in which, he has named Bikramjit Singh on whose asking SI Amarjit Singh fired upon

Krishan Bhagwan Singh, meaning thereby, no direct role has been attributed to the present petitioner in the entire occurrence.

4. Learned Senior Counsel points out that the co-accused Bikramjit Singh, Amarjit Singh and Pardeep Singh, to whom direct role has been attributed, have already been granted the concession of pre-arrest bail by this Court. He argues that from the police file, it is crystallised that protesters had gathered there in spite of promulgation under Section 144 Cr.P.C., which itself is an illegal act and thereafter, occurrence took place due to attack made on the police personnel, who were performing their duties. Further argument is that Beant Singh, who had given specific role to the petitioner, now had got recorded his statement before the earlier Commission of the inquiry and in his those statements, he has not named the present petitioner as accused and had also not attributed any direct role to the petitioner.

5 It is also asserted that the petitioner is suffering from serious ailment and is undergoing treatment from Hero Heart of DMCH, Ludhiana and HOD Dr. Wander has suggested open heart surgery. On medical ground the petitioner has already been granted the concession of interim bail by this Court vide order dated 29.05.2019, which was subsequently extended for one month by this Court vide order dated 16.07.2019 and is continuing till today. Mr. Rai, Sr. Advocate lays much stress to the fact that the petitioner has never mis-used the concession of interim bail granted to him on medical ground by this Court and moreover, nothing is to be recovered from petitioner and investigation shall take sufficient time to conclude, no useful purpose will be served by

keeping the petitioner in custody for an indefinite period. Hence, the present petition be allowed and petitioner be released on regular bail.

6. On the other hand, learned State counsel has opposed the prayer made in the present petition urging that the demonstrators were holding a peaceful Dharna on the link road and neither of them was armed with any fire arm or lethal weapons. Rather, in the morning of 13/14.10.2015, between 04:00 a.m. - 07:00 a.m. the demonstrators had scattered on the main Kotakpura-Bragari Road to protest against the sacrilege of Holy Shri Guru Granth Sahib and the demonstrators moved to the pointed place i.e. link road at T-Point, Behbal Kalan. Till this time there was no violence from any side and the demonstrators were holding peaceful Dharna chanting religious prayers and distributing Langar which was also partaken by the police officials present there.

7. The argument of learned State counsel is that the situation took an ugly turn when the Petitioner and his reader Inspector Pardeep Singh along with other police personal reached the spot and started abusing the peaceful demonstrators. It is further argued that Inspector Pardeep Singh slapped and gave kick blows to the peaceful protesters due to which the situation got tense infuriating the peaceful demonstrators at which on the orders/command of the present petitioner Charanjit Singh Sharma (as per the 1st Challan) police resorted to unprovoked firing resulting in the death of two demonstrators namely Krishan Bhagwan and Gurjit Singh. It is argued by the State that in fact, the petitioner and his reader Inspector Pardeep Singh were the aggressors due to which the peaceful dharna turned into a violent demonstration and certain police personal along-with demonstrators were also injured and the public

property was also damaged. Thus, he prays for dismissal of the present petition submitting that the petitioner was the aggressor due to which the situation got tense infuriating the peaceful demonstrators at which on the orders of the present petitioner police resorted to unprovoked firing resulting in the death of two demonstrators namely Krishan Bhagwan and Gurjit Singh.

8. No other argument has been raised by either of the parties.

9. Having heard learned counsel for the respective parties, this Court is of the view that the duty of the State is to maintain law and order and it is highly impossible to believe that the protestors who were hundreds in number and gathered at a particular place would not create any ruckus or chaos, disturbing law and order. In the case in hand, police personnels were injured and public property was also damaged. This Court is not oblivious of the fact that to bring such a situation under control, the police had to step in and act to dispense the mob.

10. This Court cannot ignore that the order under Section 144 Cr.P.C. was in force at the site as well. As on date, nothing incriminating material has been brought to the notice of this Court against the petitioner and nothing is to be recovered from him at this stage. Moreover, the petitioner is cooling his heels from the date of his arrest i.e. 27.01.2019 and it is a matter of evidence that which party was the aggressor.

11. In view of the discussions made hereinabove and considering the custody period undergone by the petitioner, who is behind bars since 27.01.2019 and also looking into the medical condition, who is suffering from heart disease added with the facts that challan stands presented and trial is at the initial stage of prosecution evidence

meaning thereby, the conclusion of trial shall take considerable time and as such, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period. Moreover, the principle of “bail is the rule” and jail is an exception” is resonated again and again in several dictums of the Supreme Court in “*State of Rajasthan versus Balchand @ Baliay*”, 1977 AIR 2447, wherein it was held that the basic rule is bail, not jail, except-where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the court. When considering the question of bail, the gravity of the offence involved and the heinousness of the crime which are likely to induce the petitioner to avoid the course of justice must weigh with the court. In the instant case the circumstances and the social milieu do not militate against the petitioner being granted bail on monetary suretyship at this stage. At the same time any possibility of the abscondence or evasion or other abuse can be taken care of by a direction that the petitioner will report himself before the police station once every fortnight. He was on bail throughout the trial but was released after the judgment of the High Court, there is nothing to suggest that he has abused the trust placed in him by the court. He is not it desperate character or an unsocial element who is likely to betray the confidence that the court may place on him to turn up to take justice at the hands of the court.

12. Further reliance can be placed upon the dictum of Hon’ble Supreme Court in *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569 wherein it is held that the concept of speedy trial is an essential part of

Article 21 of our Constitution. In which it was also said that right to speedy trial begins with the arrest of the accused and consequent incarceration and continues at all the stages of investigation, enquiry, trial, appeal and revision so that prejudice caused by the impermissible and avoidable delay can be averted.

13. The petitioner is ordered to be released on bail subject to his furnishing personal/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

14. In the afore-said terms the present petition is allowed.

15. However, it is made clear that anything stated hereinabove, shall not be construed as an expression of opinion on the merits of the case.

16. Pending Criminal Misc. applications, if any shall also disposed off.

16.04.2024
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No