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(278)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-29263-2024

Date of Decision: 30.07.2024

ASHOK KUMAR

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. R.S. Bains, Sr. Advocate with
Mr. M.S. Chauhan, Advocate
for the petitioner.

Mr. Mohit Saroha, Asstt. A.G., Punjab.

Mr. C.M. Munjal, Advocate
for the complainant.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.36 dated 10.03.2024 registered under Sections 307, 323, 34 IPC and Sections 25 & 27 of Arms Act, at Police Station City Jalalabad, District Fazilka..

2. The present FIR came to be registered at the instance of Dharminder Singh son of Jagjit Singh and the same reads as under:-

“Statement of Dharminder Singh son of Jagjit Singh son of Ishar Singh Resident of Chinderpal MC Wali Gali, Dashmesh Nagar Jalalabad, Tehsil Jalalabad, District Fazilka, Age about 35 years, Mobile Number 9876523141, stated that I am a resident of above said address and working as an advocate at Court Complex Jalalabad. My Mother's name is Tara Rani and my father Jagjit Singh died about 33/34 years ago we have two brothers and one



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sister. The eldest brother is Sukhpal Singh who is married and the younger sister is Harmanjot Kaur who is married to Amritpal Singh resident of village Naiya Wala (Barnala). I am the youngest and my marriage took place 7 years ago with Sonia Rani daughter of Amarjit Singh resident of Talwandi Bhai. We have daughter namely Harjot Kaur, age about 6 years old. That on 09.03.2024, I have purchased the biscuit for my daughter from the shop of Ashok Sharma situated near Balmiki Mandir. When I opened the biscuit packet, it was fungus laced, so I took my daughter to the shop to return the biscuit, Ashok Sharma and his son Sanjeev Sharma and Pars Sharma were also there in the shop. I said that there is fungus laced biscuit in the packet, the children have eaten it, you should take care of it. After saying that these three people got angry (at about 8.30 pm night) and the said Sanjeev Sharma picked up a stick from the shop and hit me on the right leg and he hit me again on left leg and all these people attacked me and I came out of the shop to the road. Then Neelam Rani W/o Ashok Kumar resident of Shota Tiwana also came to the shop and after hearing our noise, she encouraged her husband Ashok Kumar and told him to bring his gun and shoot him, after Hearing that Ashok Kumar got angry and went to his house, then my brother Sukhpal Singh had also come after hearing the noise but when Sukhpal Singh was watching, Ashok Kumar Sharma came to his house with a gun and fired directly at me with the intention of killing me, when he fired at me then I immediately sat down it passed over me, then Ashok Sharma shot the second fire on me while I was sitting, then I stood up suddenly, then gun shot hit my right thigh and I fell down. When the people had gathered around, the attackers entered their house. Then my brother Sukhpal Singh arranged a ride and took me to Civil Hospital Jalalabad. Where the doctor treated me and referred me to Guru Gobind Singh Medical College, Faridkot. On which my brother Sukhpal Singh has admitted me to Guru Gobind Singh Medical College, Faridkot. The irony is that we used to bring biscuits for the girl from Ashok Sharma's shop and the biscuits

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were in fungus laced and when I went to return the packet of biscuits, they said that these biscuits should be eaten by the children, so they got angry and beat me up and directly fired on me with intention to kill. Please take legal action against Ashok Sharma, Sanjeev Sharma son of Ashok Sharma, Paras Sharma son of Ashok Sharma, Neelam Rani wife of Ashok Sharma resident of Chota Tiwanan Road near Balmik Mandir Jalalabad.”

3. The learned Senior counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. In fact, the complainant was a practicing Advocate at Jalalabad and permanent customer of the accused party who are running a grocery store. The petitioner was demanding his money from the complainant who was making excuses on one pretext or the other. On 09.03.2024, it was the complainant who had attacked the petitioner but a confrontation was avoided. Thereafter, the complainant and his family members along with 10-15 strangers came back after some time and attacked the petitioner side with deadly weapons. The complainant and others went to the shop of the petitioner and attacked him. Other persons from the complainant party entered the house of the petitioner and attacked the accused party. All this was clearly visible in the CCTV footage and the DVR had been taken away by the Investigating Agency. The petitioner, keeping in view the right to defend himself fired with his licenced weapon in the air to warn the assailants and suddenly the complainant and 3/4 other persons attacked and attempted to strangulate the petitioner and tried to snatch his gun. During the scuffle the gunshot was fired accidentally which was apparent from the CCTV footage. In fact, the said footage would show that the complainant party was the aggressor party. In this scenario merely

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because the complainant had received a gunshot injury leading to the amputation of his leg would not take away the right of the petitioner and his family to claim the right to self-defence as enshrined under Sections 102 and 105 of the IPC. In fact, the video footage had been played before the Trial Court when the bail application of Neelam Rani was being argued. As the petitioner was a first-time offender, in custody since 22.03.2024 but none of the 25 prosecution witnesses had been examined so far, the Trial of the present case was not likely to be concluded anytime soon and therefore, he was entitled to the concession of bail.

4. A reply dated 27.07.2024 by way of an affidavit of Achhru Ram Sharma, PPS, Deputy Superintendent of Police, Sub Division, Jalalabad has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. He while supporting the case of the prosecution, on a perusal of the CCTV footage states that the petitioner had initially fired in the air and only later at the complainant. He admits that the petitioner was in custody since 22.03.2024 and that none of the 25 prosecution witnesses had been examined so far.

5. On the other hand, the learned counsel for the complainant contends that though the petitioner had used his licenced weapon, it was with a view to attack the complainant party. The shot fired by the petitioner had struck the thigh of the complainant leading to the amputation of the leg. Keeping in view the allegations levelled against the petitioner, he was not entitled to the concession.

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

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7. Whether or not the petitioner acted in the right of private defence would be examined during the course of the Trial. Admittedly, the petitioner is a first-time offender, in custody since 22.03.2024 but none of the 25 prosecution witnesses have been examined so far. Therefore, the Trial of the present case is not likely to be concluded anytime soon. In this situation the further incarceration of the petitioner is not required.

8. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Ashok Kumar son of Hans Raj Sharma is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

9. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the present case.

10. The petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

30.07.2024

JITESH

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