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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-30611-2024 (O&M)
Date of decision: 27.09.2024

Shamsher Singh @ Shera

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikram Satpal Anand, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This is second petition filed under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking regular bail in case bearing FIR No.214 dated 17.08.2022 under Sections 307, 353, 186, 34 of the Indian Penal Code, 1860 (for short 'IPC'), Sections 21 & 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and Section 25 of Arms Act, registered at Police Station Jandiala, District Amritsar.

2. Learned counsel for the petitioner submits that first petition filed



by the petitioner seeking regular bail was dismissed as withdrawn on 06.02.2024 and this second has been filed on the ground that the petitioner has already undergone more than 02 years of custody and till date, the prosecution has examined only 01 PW out of 14 prosecution witnesses.

3. The present FIR was registered at the instance of SI Ajay Pal Singh on the allegations that on 17.08.2022, he along with other police officials was present at T-point, Devidaspura Main Road, Near Jandiala Guru for patrolling and checking of suspicious persons. In the meantime, two haircut fashioned young persons came on a motorcycle and when they were signalled to stop, the person driving the motorcycle turned it towards Village Devidaspur in high speed and the pillion rider fired three shots on the police party with his pistol with an intention to kill them. While fleeing away, the pillion rider again fired shots. Thereafter, the accused were apprehended and driver of the motorcycle disclosed his name as Gurbhej Singh @ Bheja @ Baba and pillion rider disclosed his name as Shamsher Singh @ Shera (petitioner). Thereafter, all the formalities were completed in accordance with law and from possession of driver of the motorcycle/co-accused Gurbhej Singh @ Bheja @ Baba, 02 kg of Heroin was recovered.

4. Learned counsel for the petitioner, *inter alia*, contends that the petitioner is behind bars since 17.08.2022 and delay in conclusion of the trial cannot be attributed to him, which has violated the fundamental right of the petitioner enshrined under Article 21 of the Constitution of India. It is further



contended that it is a case of no injury and offence under Section 307 of IPC has been added just to aggravate the offence, as the complainant is a police personnel. The petitioner is not involved in any other case and no contraband has been recovered from his possession and the same is recovered from the possession of co-accused Gurbhej Singh @ Bheja @ Baba.

5. *Per contra*, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that the petitioner has actively participated in the incident and fired shots upon the police party and 30 bore pistol was recovered from him, as such, his complicity is writ large. Learned State counsel produces the custody certificate dated 26.09.2024 of the petitioner in the Court today, which is taken on record. However, he could not controvert the fact that the petitioner is not involved in any other case.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner is in custody for the last 02 years, 01 month and 05 days as on 26.09.2024 and the trial of the case will take long time in its conclusion as only 01 out of 14 prosecution witnesses has been examined so far. The culpability, if any, would be determined at the time of trial. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

7. The foundational concept of the criminal jurisprudence is to



ensure speedy trial. The Hon'ble Supreme Court has repeatedly reiterated that right to speedy trial is enshrined in Article 21 of the Constitution of India. Speedy trial would cover investigation, enquiry, trial, appeal, revision and retrial etc. i.e. everything starting with the accusation against the accused and expiring with the final verdict of the last Court.

8. It has further been held in law that if a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution of India. The procedure so prescribed must ensure speedy trial for determination of the guilt of such person. Some amount of denial of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes excessively long, the fairness guaranteed by Article 21 of the Constitution of India would come into play.

9. In this regard, reference is being made to the law laid down by the Hon'ble Supreme Court in the context of right to speedy trial under Article 21 of the Constitution of India on the following decision:- ***Akhtari Bi Vs. State of M.P., (2001) 4 SCC 355, Surinder Singh Alias Shingara Singh Vs. State of Punjab, (2005) SCC (Crl) 1674, P. Ramachandra Rao Vs. State of Karnataka, (2002) 4 SCC 578, Babu Singh and others Vs. State of U.P., (1978) 1 SCC 579, Takht Singh and others Vs. State of M.P., (2001) 10 SCC 463; Special Leave to Appeal (Crl) No.2356 of 2010, Kushal Singh Vs. State of U.P. (2JJ.) and Fazal Vs. State of Uttar Pradesh, (2012) 5 SCC***



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10. Ergo, I am inclined to allow the prayer of the petitioner in view of the discussion above as well as the judgment rendered by the Hon'ble Supreme Court in *Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)*, **2023 SCC Online SC 352**. Accordingly, the present petition is allowed and petitioner Shamsher Singh @ Shera is ordered to be released on regular bail during trial on his furnishing bail/surety bonds to the satisfaction of learned Illaqa Magistrate/trial Court/Duty Magistrate concerned.

11. The present petition seeking regular bail to the petitioner is allowed solely on the ground of long custody already undergone by him and without commenting on the merits of the case, lest it may prejudice the outcome of the case pending before learned trial Court.

[HARPREET SINGH BRAR]
JUDGE

27.09.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No