



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Sr. No.215

CRM-M-33562-2023

Date of decision : 20.08.2024

GURJIT SINGH

..... Petitioner

VERSUS

STATE OF PUNJAB

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Krishan Kumar Thakur, Advocate and
Mr. Paras Khindri, Advocate
for the petitioner.

Mr. Vinay Kumar, DAG, Punjab.

Mr. Harmilonjot, Advocate for
Mr. Eknoor Kaur Sara, Advocate for complainant.

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked for grant of regular bail to the petitioner in case FIR No.149 dated 11.08.2020, under Section 307 IPC and Section 25 of Arms Act, 1959 (Sections 302, 120-B IPC and Section 27 Arms Act were added later on), registered at Police Station Garshankar, District Hoshiarpur.

2. The gist of the allegations as alleged against the petitioner are that the FIR was registered on the statement of complainant Jhalman Singh son of Budh Singh, resident of village Kunali, P.S. Garshankar, District Hoshiarpur. He stated that he is having two sons, namely Jaswinder Singh who is elder and residing in England. Dharminder Singh, younger son is residing here. His son Dharminder Singh was confined in jail in a murder case and was released on bail on 23.07.2020 from Kapurthala Jail. On 10.08.2020, he had gone to Ludhiana with his friend to purchase articles and on returning to Nangal Road Garshankar, he stayed at the shop of his friend



and was sitting with brother of his friend namely Baljit Singh. He (complainant) is residing in the street opposite to said shop. At about 8:45 PM on 10.08.2020, when he went to the shop to call his son, then a Swift car of white color came from Nangal side out of which Gurjinder Singh @ Sonu son of Surjit Singh and one other accused armed with pistols alighted from the car and they started firing on his son. His son sustained two fire shots on different parts of his body and accused fled away from the spot in the car towards Garshankar side while abusing. He took his son to Civil Hospital, Garshankar where his MLR was made and he was referred to P.G.I. Chandigarh but due to critical condition, he took his son to IVY Hospital, Nawashahar. The motive behind this occurrence was that in the year 2018, there was fight with Gurjinder Singh.

3. Learned counsel for the petitioner *inter alia* submits that the petitioner has been falsely implicated in this case. Initially he was not named in the FIR and after a period of one year, only on the basis of disclosure statement of co-accused, he has been nominated in the present case. He also submits that PW-1 i.e. eyewitness has turned hostile. He has undergone an actual custody of 03 years, 02 months and 14 days and there is no other criminal case registered against him.

4. Learned counsel appearing on behalf of complainant has vehemently opposed the submissions made by the learned counsel for the petitioner and contends that the petitioner is not entitled for concession of regular bail.

5. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He states that the petitioner was actively involved in the commission of the offence. He



has filed the custody certificate dated 18.08.2024 in Court and as per custody certificate, the petitioner has undergone actual custody of 03 years, 02 months and 14 days, however, submits that there is no other criminal case registered against him. He on instructions from ASI Rashpal Singh submits that charges were framed on 02.09.2022 and out of total 22 prosecution witnesses, only three prosecution witnesses have been examined till date. The next date of hearing before the learned trial Court is 30.08.2024. He however, contends that in view of the serious allegations against the petitioner, he is not entitled to the concession of regular bail.

6. Heard the rival submissions made by learned counsel for the parties.

7. Admittedly, the petitioner is in custody since 03 years, 02 months and 14 days and the charges were framed on 02.09.2022 and out of total 22 prosecution witnesses, only three prosecution witnesses have been examined till date. The petitioner was nominated on the basis of disclosure statement of co-accused after a period of one year. It would be unjust to keep him behind bars looking at the condition of the jails which are not conducive for rehabilitation process and detaining the accused persons in jails would also tantamounts to violation of Article 21 of the Constitution of India including the right to speedy trial, and is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgment of Apex Court in “Dataram Singh vs. State of Uttar Pradesh and another, (2018) 3 SCC 22”.

8. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Apex Court in “Abdul Rehman



Antulay and others v. R.S. Nayak and another”, 1992(2) RCR (Criminal) 634 observed that Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.

9. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Further, considering the aspect that the charges were framed on 02.09.2022 and out of total 22 prosecution witnesses, only three prosecution witnesses have been examined till date, this Court is of the considered view that further incarceration of the petitioner will not serve any purpose.

10. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioner shall also abide by the following conditions:-

- (I) The petitioner will not tamper with the evidence during the trial.
- (II) The petitioner will not pressurize/intimidate the prosecution witness(s).
- (III) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (IV) The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.
- (V) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.



11. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

12. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(KIRTI SINGH)
JUDGE

20.08.2024
Kavita Nain

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No