

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-40823-2023
Date of Decision: 11.01.2024

Dalip Sharma @ Sunny @ Guzzar Petitioner

Versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vivek K. Thakur, Advocate,
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

1. This is the third petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.12 dated 25.02.2022, under Sections 3 & 4 of the Official Secrets Act, 1923 and Section 120-B IPC, registered at Police Station Sadar Pathankot, District Pathankot.
2. It has been submitted by learned counsel for the petitioner that this is the third successive bail petition filed by the petitioner and the earlier two petitions were dismissed as withdrawn on 08.09.2022 vide Annexure P-7 and 17.04.2023 vide Annexure P-9. He further submitted that the petitioner is in custody from 12.05.2022 which is almost 1 year 7 months and 26 days. He also submitted that the petitioner was earlier involved in one case under the NDPS Act but he has since been acquitted in that case on

29.07.2021 and the police has planted the present case upon the petitioner in view of the fact that earlier he was involved in one case under the NDPS Act. He further submitted that it is a case where an FIR was registered against one Navjot Singh on the ground that he was passing on secret information to Pakistan while he was posted in Pathankot by using his mobile number and he along with one unknown person was also giving information with regard to the movement of Indian Army to the Pakistan Agencies which affects the security and integrity of India. Thereafter, when the police raided the house of the aforesaid Navjot Singh, his wife had provided two mobile numbers to the police but in the meanwhile the aforesaid Navjot Singh committed suicide. On the basis of the aforesaid mobile numbers, the police thereafter nominated one Sandeep and during the investigation it was found that the petitioner was using the mobile number linked with the Aadhar Card which belongs to the aforesaid Sandeep and because of this reason the petitioner was nominated in the present case. Thereafter, the police cooked up a story with regard to various disclosure statements which according to the police were made by the petitioner. He also submitted that it was only for the purpose of false implication since the main accused, namely, Navjot Singh had committed suicide and in order to carry on with the procedure of the FIR the police nominated the petitioner wrongfully and with the result that he had to face incarceration for 1 year 7 months and 26 days.

3. Learned counsel for the petitioner further submitted that the present FIR has been lodged under Sections 3 & 4 of the Official Secrets Act, 1923 read with Section 120-B IPC and also submitted that the FIR has

been lodged by the State and the cognizance has been taken by the trial Judge on the basis of the report filed by the State Police whereas as per Section 13 of the Official Secrets Act, it has been so stated vide Sub Section 3 that no Court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the appropriate Government or some officer empowered by the appropriate Government in this behalf. Sub Section 5 of the Act defines the expression 'appropriate Government' to mean in relation to any offences under Section 5 not connected with a prohibited place or with a foreign power, the State Government and in relation to any other offence, the Central Government. He also submitted that so far as the present FIR is concerned, the same was lodged under Sections 3 & 4 of the Official Secrets Act and therefore, the present FIR would fall under Clause (b) of Sub Section 5 of Section 13 of the Official Secrets Act and therefore, the appropriate Government would be the Central Government. He further submitted that the Central Government has till date not accorded any approval nor has delegated any officer in this regard and the entire exercise has been done by the State Government and therefore, even the cognizance which has been taken by the Court was without any authority of law and the charges which were framed against the petitioner were also without any authority of law being violative of Section 13 of the Official Secrets Act.

4. On the other hand, Mr. Rajiv Verma, DAG, Punjab submitted that the petitioner is in custody for 1 year 7 months and 26 days and also submitted on instructions that repeatedly sanction and approval was sought from the Central Government but the same has not been received till date.

He further submitted that the cognizance was taken by the Court on the basis of the report filed by the State Police without any approval or order or complaint from the Central Government.

5. I have heard the learned counsels for the parties.

6. The petitioner has faced incarceration for 1 year 7 months and 26 days and this is his third successive bail petition and his earlier bail petitions were dismissed as withdrawn. The main allegation in the FIR is against one Navjot Singh, who thereafter committed suicide and on the basis of information provided by his wife, some numbers were traced and one Sandeep was apprehended by the police and the police linked the present petitioner with the aforesaid Sandeep on the basis of usage of mobile phone. The petitioner is stated to be not involved in any other case except for one case under the NDPS Act in which he stated to have been acquitted on 29.07.2021. As per the learned counsel for the petitioner, the Court has taken cognizance of the offence and thereafter, even the charges were framed. However, during the course of arguments, it was so stated by the learned State counsel that the entire exercise has been done by the State Government and without any further order or approval or sanction etc. from the Central Government. Therefore, the prayer made by the learned counsel for the petitioner with regard to violation of Section 13 of the Official Secrets Act pertaining to the restriction on the trial of offences, cannot be ignored and carries weight. It is made clear that the present is a bail petition only and nothing observed herein shall be meant to be any expression on merits of the case including the prayer of the petitioner with regard to bar of taking cognizance. This Court is of the view that considering the long custody of

the petitioner, he deserves the concession of regular bail.

7. Consequently, the present petition is allowed and the petitioner is ordered to be released on regular bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

8. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

11.01.2024
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |