



CRM-M-43762-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

(207)

CRM-M-43762-2024  
Date of Decision : 08.11.2024

Gurcharan Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Vinod Ghai, Sr. Advocate with  
Mr. Arnav Ghai, Advocate and  
Mr. Amritpal Singh Mann, Advocate  
for the petitioner.

Mr. Sahil R. Bakshi, AAG, Punjab.

Mr. Buta Singh Bairagi, Advocate  
for the complainant.

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KULDEEP TIWARI, J.(Oral)

1. Through the instant petition, filed under Section 439 of Cr.P.C. (Section 483 of the BNSS, 2023), the petitioner craves for indulgence of this Court, for being enlarged on regular bail, in case FIR No.71 dated 19.09.2023 under Sections 302, 212 and 120-B of the IPC, 1860, and under Sections 25 and 27 of the Arms Act, 1959, registered at Police Station Mehna, Moga, Tehsil and District Moga,

***ALLEGATIONS AGAINST THE PRESENT PETITIONER***

2. In the instant case, the prosecution agency was set into motion on a complaint made by one Karamjit Kaur alias Navdeep Kaur Gill, wherein, she alleged that two unknown persons, entered into their house, and open fired gunshots, which had hit her husband-Baljinder Singh, and consequently he succumbed to his injuries. She further alleged that when she



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was taking her injured husband to the hospital, her injured husband in front of some other persons, told her that the assailants were sent by Gurcharan Singh, Sukhvir Singh alias Seera, Hardeep Singh alias Deepu and Jagjit Singh alias Jagga. On the basis of above, the FIR (supra), was registered against the above named persons, which includes the present petitioner. In the instant case, the investigation was carried out by the Special Investigating Team (SIT), and total 16 persons were found to be involved in the commission of the instant crime, and out of these, 13 have already been arrested, and three are on the run.

3. What surfaced from the investigation that no role of the present petitioner-Gurcharan Singh and other co-accused Sukhvir Singh alias Seera, Jagjit Singh and Hardeep Singh was established, and the head of the SIT concerned, in its report dated 08.12.2023 (Annexure P-3), recorded as under:-

*“Besides this, call details of mobile numbers 98142-91798, 98159- 91798, 98145-00648, 89868-40783, 99144-08585 and 89068-67000 of Sukhveer Singh @ Seera, Hardeep Singh @ Deepu, Jagjit Singh @ Jagga residents of Dalla and Gurcharan Singh @ Sidhu resident of Takhanvadh from 17.09.2023 to 19.09.2023 were obtained and perused. On perusal of call detail reports also, no talks have been found to have been made by above said four accused with persons committing the murder.”*

4. The report was then sent to the Deputy District Attorney (Legal), who after perusal thereof, opined vide Annexure P-4, dated 14.12.2023, that after making entry regarding the above investigation, the investigating agency may file an application under Section 169 Cr.P.C. for getting the release of the above named four persons from the custody, as qua them no

evidence was found by the prosecution. The relevant extract reads as under:-



*“I have carefully perused the report dated 08.12.2023 of Special Investigation Team and documents attached. In the report of SIT, it has been written that during investigation no evidence has come on record against accused Sukhveer Singh @ Seera son of Gurtek Singh, Hardeep Singh @ Deepu son of Jaspal Singh, Jagjit Singh @ Jagga son of Gurnek Singh residents of Dalla and Gurcharan Singh @ Sidhu son of Buta Singh resident of Takhanvadh District Moga. Keeping in view the above said facts mentioned in the report of SIT, as per my opinion after making entry regarding above said investigation in case at this stage and in the event of above said persons to be in custody, application under section 169 Cr.P.C is liable to be filed in concerned court for getting them released from custody and Arshdeep Singh @ Arsh Dalla son of Charanjit Singh resident of village Dalla is required to be named as accused in the present case. ”*

5. Thereupon, the Superintendent of Police, Moga, on 15.12.2023 (Annexure P-5), though concur with the inquiry report of the SIT, and opinion of the Deputy District Attorney (Legal), dated 08.12.2023 (Annexure P-4), however, he opined in the report (supra), that it would be better if the prosecution agency file a final report qua the above named persons, so that they may not get the benefit of default bail, however, on receipt of the FSL report, supplementary challan was presented. The relevant extract of the opinion of the Deputy District Attorney (Legal), reads as under:

*“.....In these circumstances, as per my opinion, it will be appropriate to submit report u/s 173(2) Cr.P.C in court against the aforesaid accused on the basis of facts of the case for orders so that accused may not get benefit of compulsive bail u/s 167(2) Cr.P.C. After evidence on record and receipt of report of F.S.L. Lab Bathinda, it will*



*be appropriate to present supplementary challan under section 173(8) Cr.P.C on its basis.”*

6. Thereupon, the Deputy District Attorney (Legal), Moga, opined to file the final report/challan, and to file a supplementary challan, after the receipt of the FSL report from Bathinda.

7. It is not under dispute that now the FSL report has been received. Even the short reply, dated 12.08.2024, which has been filed, by way of an affidavit of Sh. Amarjit Singh, DSP, Dharamkot, District Moga, which is ordered to be taken on record, reflects that after receipt of the FSL report, now the supplementary challan has been filed.

8. The reply reflects that no data was found, which can relate the present petitioners with the instant crime. Thereafter, the prosecution agency, after considering the report of the FSL, proceed to file the supplementary report under Section 173(8) of Cr.P.C., and requested for discharge of the present petitioner and the other three persons, as mentioned above. The application preferred by the prosecution was not found favoured by the learned trial Court concerned, and it does not find any merit in the application, and the petitioner was not discharged. The application was dismissed with the following observations :-

*“By the mere fact that the shooters, namely Krishan Kumar @Baba and Gurinder Singh @ Kaka got recorded in their disclosure statements to the police that Sukhvir Singh @ Seera, Hardeep Singh @ Deepu, Jagjit Singh @ Jagga and Gurcharan Singh Sidhu had no role to play in commission of murder of Baljinder Singh @ Balli or that call details record of their mobile numbers from 17.09.2023 to 19.09.2023 did not reflect any conversation of Sukhvir Singh @ Seera, Hardeep Singh @ Deepu, Jagjit Singh @ Jagga and Gurcharan Singh Sidhu having*



*taken place with the shooters, no such definite conclusion can be drawn that they are innocent and they have not played any role or they have not conspired to murder Baljinder Singh @ Balli.”*

***SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER***

9. Learned senior counsel for the petitioner, on asking for the relief (supra), makes hereinafter submissions :-

- (i) that till date, as apparent from the discharge report, filed by the prosecution, there is no incriminating evidence with the prosecution, to connect the present petitioner with the alleged crime;
- (ii) that the other three co-accused, who are on co-equal pedestal, has been extended the relief of regular bail, by this Court, vide order dated 29.08.2024 (Annexure P-11), therefore, the present petitioner also seeks the similar relief on the ground of parity;
- (iii) that the petitioner has suffered incarceration of more than 01 year and 01 month, as on date, and the petitioner is ready and willing to face the trial, by appearing on each and every date, before the learned trial Court concerned;
- (iv) that the petitioner is involved in one other case for a petty offence, i.e. the offence punishable under Section 323 of the IPC, 1860, in which, he is already on bail;
- (v) that now investigation has already been complete, and further custodial interrogation, in view of the above all facts and circumstances, is totally unwarranted.

***SUBMISSIONS OF THE LEARNED STATE COUNSEL AS WELL AS COUNSEL FOR THE COMPLAINANT***

10. The submissions made by the learned senior counsel for the petitioner has been strongly opposed by the learned State counsel, assisted by

Mr. Buta Singh Bairagi, Advocate, counsel for the complainant. It is



submitted that there is a material change in the circumstances, after the bail granted to the other co-accused, i.e. Hardeep Singh @ Deepu, Sukhvir Singh @ Seera, and Jagjit Singh @ Jagga, as at that point of time, the discharge report was not declined by the learned trial Court concerned, rather, the same was pending consideration, and now the said report has been declined by the learned trial Court concerned, vide order dated 12.09.2024, therefore, the present petitioner cannot claim parity with the other co-accused.

11. Learned State counsel, on instructions imparted to him by ASI Sukhpal Singh, informs this Court that charges were framed in the FIR (supra), on dated 31.07.2024, and the prosecution has cited total 25 witnesses in the final report, however no prosecution witness has been examined, till date.

12. This Court has examined the rival submissions made by the learned counsel for the parties concerned, and has gone through the record as well.

### ***DECISION***

13. Considering the above facts, this Court, is of the view that the instant petition is amenable to be allowed, for hereinafter extracted reasons :-

- (i) that it is not under dispute that the police has filed a discharge report, mentioning therein, that there is no incriminating evidence, as on date, with the prosecution to connect the present petitioner with the alleged crime;*
- (ii) though the discharge report has been discarded by the learned trial Court concerned, however, the fact remains that the veracity of the allegations, as alleged in the complaint, which is the bedrock for the institution of the instant FIR, is yet to be established by the prosecution, by leading a cogent evidence;*



(iii) that the petitioner has already suffered incarceration of 01 year, 01 month and 08 days, as on date, and the trial in the instant FIR, is yet to begin, therefore, the conclusion of the trial will take a long time;

(iv) that there is no allegation that the petitioner has caused any injury to the deceased, or he was present with the accused, at the spot;

(v) that no specific role is attributed to the present petitioner.

14. In view of the above, the instant petition is **allowed**. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of Chief Judicial Magistrate/trial Court/Duty Magistrate, concerned.

15. However, anything observed hereinabove shall have no effect on the merits of the case and is meant for deciding the present petition only.

16. It is made clear that in case, the petitioner, if ever makes an attempt to delay the trial, by adopting dilatory tactics and by not appearing before the learned trial Court concerned, on each and every date, the respondent-State is at liberty to move an appropriate application seeking cancellation of regular bail granted to the petitioner.

(KULDEEP TIWARI)  
JUDGE

November 08, 2024  
Manpreet

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