

(2022) 10 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 52173 Of 2021, 31236,32704
Of 2022 (O&M)

Gaurav Singh @ Sawan @ Golu And Others

APPELLANT

Vs

State Of Punjab

RESPONDENT

Date of Decision : 10-10-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 148, 149, 302, 307, 380, 411, 450
Arms Act, 1959 — Section 25
Prisons Act, 1894 — Section 52A

Citation : (2022) 10 P&H CK 0036

Hon'ble Judges : Arvind Singh Sangwan, J

Bench : Single Bench

Advocate : R.S. Sidhu, Mannat Anand, Balbir Kumar Saini, Kanika Sachdeva

Final Decision : Dismissed

Judgement

Arvind Singh Sangwan, J

Prayer in these petitions is for grant of regular bail to the petitioners namely Gaurav Singh @ Sawan @ Golu, Ravi Kumar and Abinesh Kumar @ Bunny, under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.0125 dated 26.07.2016, for offence punishable under Sections 302, 307, 148, 149, of the Indian Penal Code, 1860 (in short 'IPC') and 25 of the Arms Act (Sections 380, 450, 411 IPC added later and Section 307 IPC stands deleted) registered at Police Station Sadar Amritsar, District Amritsar.

Counsel for the petitioners have relied upon the order dated 21.08.2019 passed in CRM-M No.19535 of 2019, vide which the co- accused of the petitioners namely Dinesh Kumar @ Tinku was granted the concession of regular bail. Counsel for the petitioner have further relied upon the order dated 04.12.2020 passed in CRM-M No.37123 of 2019, vide which the co-accused of the petitioners namely Kapil Jaitly was also granted the concession of regular bail by this Court.

The operative part of the order reads as under:

"The aforesaid FIR was registered at the instance of the complainant Kulwant Singh, who is the brother of deceased Hardev Singh. As per the FIR, on 25.07.2016 at about 9.15 in the night, the complainant had gone to meet his brother Hardev Singh. 5-6 persons in a car and two persons on a motorcycle came with their respective weapons and entered the eatery (ahata) and started inquiring about the sons of his brother. Thereafter, those persons started inflicting injuries with rifle and pistols on his brother. Subham and Rohit sons of Baljinder Singh, Dinesh Kumar @ Tinku, Bunny sons of Ashok Kumar, Ravi, Lakhani and 2-3 other unidentified persons were present there. Subham was carrying a rifle on his left shoulder and a pistol in his right hand and with the intention to kill, he fired a bullet shot from his pistol which hit his brother Hardev Singh in his left flank near heart and as a result thereof, he fell down on the ground in injured condition. However when Raju, who was working as helper with Hardev Singh at his tavern, came forward to save him (Hardev Singh), then Subham fired at him with the intention to kill him and it hit him in his stomach and Subham's other accomplices also fired. When the complainant and other persons who were standing outside the tavern raised hue and cry, then all the accused persons ran away from the spot along with their respective weapons on their respective vehicles. Thereafter, Hardev Singh and Raju were taken to hospital after arranging the vehicle, but the doctor after examining Hardev Singh declared him dead, whereas the relatives of Raju took him to Guru Ramdass Hospital, Mehta Road, Amritsar and got him admitted there. Raju has also succumbed to his injuries.

Counsel for the petitioner has argued that the petitioner was never named in the FIR which was registered at the instance of complainant, an eyewitness and it is in the supplementary statement made by the complainant, the petitioner has been named as an additional accused. Even in the supplementary statement, there is no allegation against the petitioner that he has ever given fire shot injuries to Hardev Singh or Raju, who have died in the incident. The explanation given by the complainant Kulwant Singh in his supplementary statement that he being in trauma due to the death of his brother Hardev Singh has forgotten to mention the names of all the accused, is nothing but an afterthought, so as to implicate the petitioner in the case. She has further argued that even in the supplementary statement, there is no allegation against the petitioner that he caused any injury to the deceased in any manner except that the petitioner was present along with his other co-accused. The co-accused Dinesh Kumar @ Tinku has already been admitted on bail by this Court in CRM-M-19535-2019 titled as Dinesh Kumar @ Tinku Versus State of Punjab, vide order dated 21.08.2019. The eyewitnesses examined in the case, namely, Gurpreet Singh, PW-13 and PW-14 Mahesh Kamat have not supported the case of prosecution and were rather declared hostile. Moreover, on the date when the co-accused Dinesh Kumar @ Tinku was admitted on bail vide order dated 21.08.2019 passed by this Court, his custody was about 2 years and 10 months, whereas the petitioner is in

custody since 11.08.2016. The complainant is not coming forward to get himself cross- examined despite numerous opportunities granted to him and now the court has to adopt the recourse of bailable warrants to the complainant. As against 38 witnesses cited by the prosecution, only 15 witnesses have been examined so far. Petitioner is in custody for about 4 ½ years.

Learned State counsel has filed the custody certificate, which is taken on record. He has not disputed the custody. However, he submits that it may be on account of lockdown in Covid-19 epidemic, the complainant is not able to appear in the case to depose for his cross-examination, but the petitioner was a member of unlawful assembly and two deaths have been caused in the case. Therefore, considering the nature of the case, the petitioner is not entitled to be admitted on bail. Moreover, in case, he is released on bail, he may influence the witnesses, as two of the witnesses have already been declared hostile.

I have heard learned counsel for the parties. Petitioner is in custody since 11.08.2016. The present FIR was registered at the behest of Kulwant Singh, who is none else but an eyewitness and the real brother of Hardev Singh, who died in the incident. The allegation of use of firearm is against the co-accused Subham. The other co-accused Dinesh Kumar @ Tinku has already been admitted on bail by this Court vide order dated 21.08.2019 passed in CRM-M -19535-2019 and at that time, he was in custody for about 2 years and 10 months. His name was otherwise find mention in the FIR. But in the case in hand, the name of the petitioner does not figure in the FIR. It is only in the supplementary statement, he has been named as an additional accused. Firearm injuries have not been attributed to him. Moreover, the custody of co-accused Dinesh Kumar @ Tinku, was about 2 years and 10 months when he was admitted on bail, whereas the petitioner is in custody for 4 years and 6 months. Even otherwise, the eyewitnesses PW13 and PW14 who have been examined in the case, have not supported the case of the prosecution and rather declared hostile. Further, as against 38 witnesses, only 15 witnesses have been examined. Interestingly, as on 21.08.2019, when the co-accused Dinesh Kumar @ Tinku was admitted on bail, 14 witnesses were examined, whereas after 21.08.2019, only one witness has been examined. The complainant is not coming forward to depose in the case and in this manner, the trial Court was constrained to issue bailable warrants for his appearance. Though the case was fixed before the trial Court for today, but even today the complainant has not been examined.

Considering the fact that the petitioner is in custody since 11.08.2016 and two of the witnesses, who were eyewitnesses i.e. PW13 Gurpreet Singh and PW14 Mahesh Kamat, have not supported the case of the prosecution and were declared hostile coupled with the fact that there is no allegation against the petitioner in the FIR and it is only in the supplementary statement, the presence of the petitioner has been mentioned, this Court deems it appropriate to admit the petitioner on bail."

For the sake of brevity, the facts are not reproduced again.

Counsel appearing for the petitioner – Gaurav Singh @ Sawan @ Golu, has argued that the petitioner was granted interim bail on 30.05.2022, which is continuing and in the intervening period, he has not misused the concession of bail.

Counsel for the petitioner – Abinesh Kumar @ Bunny, has submitted that the petitioner is in custody for the last 04 years, 04 months and 19 days.

Counsel for the petitioner – Ravi Kumar has argued that the petitioner is in custody for the last 06 years, 01 month and 27 days.

It is the common argument of counsel for the petitioner(s) that the main injury is attributed to co-accused Shubham, who is in judicial custody and two of the eye-witnesses have not supported the prosecution version.

Reply by way of affidavit of the SHO, Police Station Sadar Amritsar City, Amritsar is on record, in which the factual position, as per the FIR, is not disputed.

As per the Custody Certificate filed in the Court today, the petitioner – Gaurav Singh @ Sawan @ Golu, though, cited as a gangster is in custody for the last about 05 years, 09 months and 26 days. A perusal of the Custody Certificate show that in 04 cases, he is involved under Section 52-A of the Prisons Act and 03 cases under the Indian Penal Code and 01 case under the NDPS Act, in which he is on bail.

As per the Custody Certificate, the petitioner – Ravi Kumar, is not involved in any other case and he is in custody for the last 06 years, 01 month and 27 days whereas the petitioner – Abinesh Bhatti @ Abhinesh @ Bunny is in custody for the last 04 years, 04 months and 19 days and he is involved in 02 cases under the Indian Penal Code and under the Prisons Act and is on bail.

Counsel for the State, on instructions from ASI Kulwinder Singh, has however, argued that out of 38 PWs, only 18 PWs have been examined so far.

A perusal of the order dated 04.12.2020 granting bail to the co-accused Kapil Jaitly, shows that on that day, out of 38 PWs, only 15 PWs had been examined, which reflects that in a period of about 02 years, only 03 PWs have been examined and the trial was substantially delayed due to COVID-19 situation.

After hearing the counsel for the parties, without commenting anything on merits of the case, considering the fact that the petitioner – Gaurav Singh @ Sawan @ Golu is in custody for the last 05 years, 09 months and 26 days; the petitioner – Ravi Kumar, is in custody for the last 06 years, 01 month and 27 days; the petitioner – Abinesh Kumar @ Bunny is in custody for the last 04 years, 04 months and 19 days; the co-accused of the petitioners is already released on bail; the custodial interrogation of the petitioners is not required and the conclusion of the trial will take some time as out of 38 PWs, only 18 PWs have been examined, so far, these petitions are allowed and the petitioners namely Gaurav Singh @ Sawan @ Golu, Ravi Kumar and Abinesh Kumar @ Bunny, are

directed to be released on bail subject to their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioners, in case they are found involved misusing the concession of bail, in any manner.