
(2019) 10 SHI CK 0025

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1563 Of 2019

Goldy Masih

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 16-10-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154, 439
Indian Penal Code, 1860 — Section 34, 188, 307, 332, 353, 379, 395, 473, 489
Arms Act, 1959 — Section 25, 27
Evidence Act, 1872 — Section 27

Citation : (2019) 10 SHI CK 0025

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Kush Sharma, Shiv Pal Manhans, P.K. Bhatti, Raju Ram Rahi

Final Decision : Allowed

Judgement

Chander Bhusan Barowalia, J

1. The present bail application has been maintained by the petitioner under Section 439 of the Code of Criminal Procedure seeking his release in case FIR No. 59 of 2018, dated 14.07.2018, under Sections 353, 332, 307, 473 read with section 34 IPC and Sections 25 and 27 of the Arms Act, registered in Police Station Kot Kehloor, District Bilaspur, H.P.

2. As per the averments made in the petition, the petitioner is innocent and has been falsely implicated in the present case. He is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. No fruitful purpose will be served by keeping him behind the bars for an unlimited period, so he be released on bail.

3. Police report stands filed. As per the prosecution story, on 14.07.2018 police of Police Chowki Shri Naina Devi were informed telephonically that in Himgiri Hotel, near Rest House Naina Devi, firing incident took place. Acting upon the

information, police visited the spot and recorded the statement of Shri Ramandeep Singh (complainant in FIR No. 59 of 2018) under Section 154 Cr.P.C. As per the complainant, he is Dy.S.P. Mohali and on 13.07.2018 three persons after firing gun shots took white verna car, having registration No. UP37H-7272. He has further stated that qua this incident, FIR No. 151 of 2018, dated 14.07.2018, under Sections 395 and 307 IPC and Section 25 of the Arms act had been registered in Police Station Sohana. The mobile phone of the complainant (in FIR No. 151 of 2018) was in the vehicle, so police tracked the mobile location, which came towards Kharad. Shri Ramandeep Singh, Dy.S.P. alongwith other police personnel followed the mobile location and came to Shri Naina Devi and a white car was found parked near the PWD Rest House, which was having registration No. PB-10EJ-7200. The number plate of the vehicle was hanging diagonally and it seemed that the number plate had been changed. As the another team of the police was coming, so the complainant (Shri Ramandeep Singh) alongwith Driver, Shri Lakhbeer Singh, was waiting for them near Himgiri Hotel and it was 02:30/02:45 a.m.. They spotted three persons roaming and they resembled like the complainant (in FIR No. 151 of 2018) disclosed, so he asked them to stop for interrogation. These three persons came out of the vehicle and started firing at them. There was cross-firing and scuffle and ultimately they manage to overpower two persons and one fled away from the spot. The nabbed persons disclosed their names as Goldy Masih (petitioner herein) and Amanpreet Singh and on being searched one pistol was recovered from the petitioner. Third person, namely Sunny Masih, who was injured, was later found and sent to CHC Ghawandal. As per the complainant (Shri Ramandeep Singh), the matter was reported to the police and his statement was recorded by the police under Section 154 Cr.P.C., whereupon police registered a case and the investigation ensued. On 14.07.2018 police photographed the spot and injured Shri Ramandeep Singh and Shri Lakhbeer Singh were medically examined at CHC Ghawandal and the injuries were opined to be simple in nature. Forensic team visited the spot and collected the scientific samples. Police recorded the statements of the witnesses. The petitioner and co-accused Amanpreet Singh were arrested and when vehicle of the accused was searched a mobile phone was recovered, which was of Goldy Masih. As per the police, injured Sunny Masih (co-accused) succumbed to his injuries, so his body was sent for postmortem examination to SLBSGMCH, Nerchowk. The petitioner and co-accused Amanpreet Singh were extensively interrogated and statement of accused Amanpreet Singh was recorded under Section 27 of the Indian Evidence Act. He got recovered two number plates of the vehicle, which were taken into possession. The petitioner also made a disclosure statement under Section 27 of the Indian Evidence Act and got recovered a pistol from the bushes. Records, qua the appointment of Shri Ramandeep Singh, Dy.S.P. and other police officials, who were accompanying him, were procured from Punjab Police Department. The investigation further revealed that on 06.07.2018 one Shri Anil Malhotra reported to the police that his verna car, having registration No. PB10EJ-7200, has been stolen. Police also found that a case has been registered against deceased Sunny

Masih and his accomplices in Police Station Nagrota Bagwan, District Kangra, under sections 379, 489, 188 IPC and Section 25 of the Arms Act. During the course of investigation it was found that on 13.07.2018, at about 11:30 p.m. the petitioner alongwith the deceased and co-accused Amanpreet Singh and other two accomplices were going in their Ritz car and they stopped verna car, having registration No. UP37H-7272. They picked up a quarrel with the occupants of verna car and also fired a gun shot on one of the occupant of the car, i.e., Shri Navneet Singh. Thereafter, they took the verna car and Shri Navneet Singh reported the matter in Police Station Sohana. In sequel to the report made by Shri Navneet Singh FIR No. 151 of 2018, dated 14.07.2018 was registered. It has come in the investigation that near Kurali both the number plates of the verna car were removed and thrown in the bushes and number plates, having number PB10EJ-7200, were affixed by the accused persons. Deceased Sunny Masih, as per the report of the Medical Officer, died due to gun shot injury to thoracic organs (lungs) and abdomen leading to haemorrhagic shock. As per the police, on 10.10.2018 challan was presented in the Court and now the case is listed for 18.10.2019. Lastly, it is prayed that the bail application of the petitioner be dismissed, as the petitioner was found involved in a serious crime. There is possibility that in case at this stage he is enlarged on bail, he may flee from justice. The petitioner can also tamper with the prosecution evidence, so his application be dismissed.

4. I have heard the learned Counsel for the petitioner, learned Additional Advocate General for the State and gone through the record, including the police report, carefully.

5. The learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He has further argued that the petitioner is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. He has further argued that no fruitful purpose will be served by keeping the petitioner behind the bars for an unlimited period. He has argued that keeping in view the fact that the challan stands presented in the Court and custody of the petitioner is not at all required by the police. He has further argued that the petitioner has been enlarged on bail in case FIR No. 151, dated 14.07.2018, under Sections 307, 395, 397, 379B IPC and Section 25 of the Arms Act, registered in Police Station Sohana, District SAS Nagar, by the Hon'ble High Court of Punjab and Haryana, vide judgment dated 16.07.2019, rendered in CRM-M-16135 of 2019 and the present is the offshoot of that FIR. Conversely, the learned Additional Advocate General has argued that the petitioner was found involved in a serious offence, so at this stage, in case he is enlarged on bail, he may tamper with the prosecution evidence and may also flee from justice. He has further argued that petitioner is very clever person and he could jump over the bail, in case granted. He has prayed that the bail application of the petitioner be dismissed.

6. In rebuttal the learned Counsel for the petitioner has argued that the

petitioner cannot be kept behind the bars for an unlimited period, so the application be allowed and the petitioner be enlarged on bail.

7. At this stage, considering the fact that the petitioner has been enlarged on bail in case FIR No. 151, dated 14.07.2018, by the Hon'ble High Court of Punjab and Haryana and the present is offshoot of that case, nothing is to be recovered from the petitioner, challan stands presented in the Court and custody of the petitioner is not at all required by the police, considering the nature of the injuries received by the complainant party, the petitioner is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, the petitioner is behind the bars for the last more than one year, he is ready and willing to abide by the terms and conditions of bail, if so granted, considering the overall facts, which have come on record, and without discussing the same at this stage and also the fact that the petitioner cannot be kept behind the bars for an unlimited period, especially when the challan stands presented in the Court, so this Court finds that the present is a fit case where the judicial discretion to admit the petitioner on bail is required to be exercised in his favour. Accordingly, the petition is allowed and it is ordered that the petitioner, who has been arrested by the police, in case FIR No. 59 of 2018, dated 14.07.2018, under Sections 353, 332, 307, 473 read with section 34 IPC and Sections 25 and 27 of the Arms Act, registered in Police Station Kot Kehloor, District Bilaspur, H.P., shall be released on bail forthwith in this case, subject to his furnishing personal bond in the sum of `25,000/-(rupees twenty five thousand) with one surety in the like amount to the satisfaction of the learned Trial Court. The bail is granted subject to the following conditions:

- (i) That the petitioner will appear before the learned Trial Court/Police/authorities as and when required.
- (ii) That the petitioner will not leave India without prior permission of the Court.
- (iii) That the petitioner will 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/her from disclosing such facts to the Investigating Officer or Court.

8. In view of the above, the petition is disposed of.