

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**Sr. No.209**

**CRM-M No.42597 of 2016  
Date of decision: 07.02.2017**

Vijay Masih

....Petitioner

versus

State of Punjab

....Respondent

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL**

Present: Mr. Ramdeep Partap Singh, Advocate  
for the petitioner.

Mr. Neeraj Yadav, AAG, Punjab.

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**DEEPAK SIBAL, J. (Oral)**

Through the present petition filed under Section 439 of the Code of Criminal Procedure, 1973, the petitioner seeks regular bail in FIR No.217 dated 12.12.2011, registered under Sections 302, 201, 148, 149 IPC, at Police Station City Gurdaspur, District Gurdaspur.

As per the FIR, Bua Masih had filed a complaint with the police that his son-in-law Manoj Kumar had informed him that his wife Goldy who was daughter of Bua Masih had left the house and that her headless dead body was found on a passage in a colony. Investigation revealed that Bua Masih's daughter Goldy was alive and was living in Jammu with one Sonu with whom, she had illicit relations. Investigations further revealed that Bua Masih, Goldy and others had connived with each other and had killed another lady namely Darshana alias Goga, so that they could falsely

implicate Manoj Kumar in the murder of Goldy paving the way for Goldy to live with her paramour-Sonu. Investigations further revealed that Darshana alias Goga was married to one Waris Masih and had illicit relations with the petitioner. It is in this background that the prosecution was lodged also against the petitioner alongwith Goldy, Sonu, Michael and others for having murdered the aforesaid Darshana alias Goga.

The petitioner had earlier approached this Court for grant of regular bail through CRM-M No.42808 of 2015-'Vijay Masih versus State of Punjab, which on 29.08.2016 was dismissed at that stage by passing the following order:-

*"Petitioner Vijay Masih has been in custody w.e.f. 5.11.2013 in a case in which machinery of prosecution was set into motion by Bua Masih informing the police that his son in law Manoj Kumar had informed him that his wife Goldy who was daughter of the complainant had left the house and that her headless dead body has been found on a passage in a colony. While the investigation was carried on, it was found that the daughter of the complainant namely Goldy was alive and was staying with one Sonu resident of Jammu with whom, she had relations despite having been married to Manoj Kumar. Manoj Kumar got an FIR registered against Bua Masih, Goldy and others alleging that they had connived with each other and had killed another lady Darshana @ Goga, so that they could falsely implicate Manoj Kumar in the murder of Goldy who actually had illicit relations with Sonu.*

*During the course of investigation, statement of father of Darshana namely Soma Masih was also recorded indicating that she had been taken from her*

*house by Goldy, Michael @ Gora, and Sonu on the pretext of attending some wedding and she did not return back.*

*So far as the petitioner is concerned, the allegation against him, as per prosecution story, is that he had illicit relations with Darshana though she was married to Waris Masih and he wanted to get rid of her.*

*Counsel for the petitioner has submitted that there is no direct evidence against the petitioner except for the statement of Waris Masih to the effect that his wife Darshana had illicit relations with an unknown person.*

*A perusal of police file indicates that statement of Vishal Masih under Section 161 Cr.P.C., has been recorded to the effect that Such Singh @ Sonu had approached him to inform that he had illicit relations with Goldy but her husband Manoj Kumar was an obstacle. Similarly, Vijay Masih who had an extra marital affair with Darshana, another lady, he wanted to get rid of her. It will be debatable whether the statement of Vishal Masih on the basis of hear say would be admissible during the course of trial. The allegation against the petitioner is of conspiracy.*

*Counsel for the petitioner has also submitted that the petitioner has been in custody w.ef. 5.11.2013. After summoning of Bua Masih and others, as additional accused, a de novo trial will be started which would cause unnecessary delay in adjudication of the matter to determine the culpability of the petitioner and other accused.*

*After hearing the counsel for the petitioner and going through the police record, I am of the opinion that no doubt delay is causing a great prejudice to the liberty of the petitioner but granting*

*him liberty might give the petitioner an opportunity to tamper with the evidence including that of Vishal Masih.*

*It is not out of place to mention here that vide order dated 24.5.2016, while deciding application of Goldy, it has been directed that the trial be concluded within a period of six months.*

*Following the said direction, this petition is dismissed, at this stage. It will be open to the petitioner to file a fresh application for bail before this Court after examination of Vishal Masih as a witness."*

A perusal of the afore-quoted order shows that this Court had dismissed the petitioner's first bail application at that stage to enable the prosecution to examine Vijay Masih. This Court had further referred to order dated 24.05.2016 passed by this Court while deciding the bail application of Goldy wherein directions have been issued to the State to conclude the trial within six months from that date. While dismissing the petitioner's bail application at that stage, liberty was granted to the petitioner to file a fresh application for bail after examination of Vishal Masih as a witness.

Learned State counsel while opposing the present application for bail admits that Vishal Masih has been examined and since he turned hostile, he has not supported the case of the prosecution. He further admits that the directions of this Court dated 24.05.2016 to conclude the trial within six months have also not been complied with and even today, 07 witnesses still remain to be examined.

The petitioner has been in custody since 05.11.2013. The star witness of the prosecution namely Vijay Masih has turned hostile and that

the directions of this Court to conclude the trial by November 2016 have not been complied with.

In view of the above, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be admitted to regular bail subject to the satisfaction of the trial Court.

However, the District and Sessions Judge, Gurdaspur, after making enquiries is directed to send a report to this Court as to why the order of this Court dated 24.05.2016 to conclude the trial within six months was not complied with.

Nothing observed herein above shall be considered to be an expression of opinion by this Court on the merits of the case.

**(DEEPAK SIBAL)**  
**JUDGE**

**February 07, 2017**

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|------|---------------------------|--------|
| (i)  | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable        | Yes/No |