

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

1. CRM-M-14662-2018

Balwant Singh @ Kaka and another

...Petitioners

Versus

State of Punjab

...Respondent

2. CRM-M-25150-2018

Gurdit Singh @ Manga

...Petitioner

Versus

State of Punjab

...Respondent

Date of decision: 14.12.2018

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. P. S. Dhaliwal, Advocate
for the petitioners in both cases.

Mr. Sidakmeet Sandhu, DAG, Punjab.

Mr. L. S. Sekhon, Advocate
for the wife of the deceased.

ARVIND SINGH SANGWAN, J. (Oral)

This common order shall dispose of above noted two petitions
as they arise out of the same FIR.

These petitions have been filed under Section 439 of the Code
of Criminal Procedure for grant of regular bail to petitioners Balwant Singh
@ Kaka, Rajwinder Singh @ Raju and Gurdit Singh @ Manga in case FIR

No. 311 dated 01.10.2016, under Sections 302, 307, 341, 364, 323, 148, 149, 427, 506, 201 and 120-B of the IPC, registered at Police Station Barnala City, District Barnala.

Learned counsel for the petitioners submits that on 14.03.2018, while granting interim bail to co-accused, namely Kulwant Singh @ Raji, Avtar Singh @ Titan, Hamir Singh and Harjinder Singh, the following order was passed by this Court in CRM-M-14336-2017 and other connected cases:

“As per allegations in the FIR got recorded on the statement of one-Gurmukh Singh Chauhan, it is stated that on 01.10.2016 at around 10.00 am, his relative Ram Singh Komal was going on his Vespa scooter to meet one Jagdish Singh @ Raja and he was following him on his motorcycle. When Ram Singh Komal turned towards Patti Road, Barnala, a car was parked there, however, he could not see the number of that car and in one Tempo, Harjinder Singh @ Minta, petitioner in CRM-M-43833 of 2017 carrying a riffle along with Hamir Singh, petitioner in CRM-M-35054 of 2017, Raju Singh, Gurbachan Singh @ Billu and Harcharan Singh Baggi, got down from the Maruti Swift car and Toyota Etios car. Kulwant Singh @ Raji was carrying a cricket bat, Balwant Singh @ Kala was having a sharp edged object and Avtar Singh @ Titan having a wooden stick, Gurdev Singh Paharia having a spade and Bittu Singh also having a spade, 3 – 4 unidentified persons carrying sharp edged weapon got on their vehicles and surrounded Ram Singh Komal and started beating him. Thereafter, these persons kidnapped Ram Singh Komal and took him in the house of Gobind Arora and kept beating him. When the complainant raised the voice, the neighbours came there and on seeing them, accused persons threw their weapons and left Ram Singh Komal there. Ram Singh Komal was taken to Civil Hospital, Barnala where doctor referred him to DMC, Ludhiana. The motive behind the occurrence was that Ram Singh Komal is President of Rajput Sabha and he has removed Gurbachan Singh @ Billu, Kulwant Singh @ Raji and Harjinder Singh @ Minta from the said Sabha. In CRM-M-43833-2017, Learned Senior counsel appearing on behalf of petitioner-Harjinder Singh @ Binta has submitted that the injury attributed to him is on a non-vital part of body and he has also referred to the MLR to submit that injury No.3 is attributed to him and as per postmortem report, the cause of death was fracture on C-7 Vertebra and this injury was not attributed to him. Learned Senior counsel for the petitioner has further submitted that two prosecution witnesses, namely, Sukhminder Singh (PW-1) and Amrinder Singh (PW-2) have not supported the prosecution version and were declared hostile. It is further submitted that three more prosecution witnesses have been examined as PW-5-Harjit Singh and PW-7

-Gursewak Singh have not named the petitioner whereas PW-6 Dalip Singh has only stated that Binta was present at the spot, whereas, the name of the petitioner is Harjinder Singh @ Minta. However, he has stated that he identified the accused present in the Court. It is also stated that in the police investigation, the petitioner was not found present at the spot and he had deposited his rifle in the Armoury on 17.10.2015. In CRM-M-14336-2017, Learned counsel appearing on behalf of petitioner-Kulwant Singh @ Raji has also stated that though two prosecution witnesses have been declared hostile and petitioner-Kulwant Singh @ Raji was shown having a handle of spade. Learned counsel further argued that this accused was also not present at the place of occurrence as he was 80 Kms away as per his call details and has relied upon the status report filed by Senior Superintendent of Police, Barnala in CRM-M-4132 of 2017 which was filed by the complainant for further investigation, wherein, it is stated that as per call details of the mobile phone of petitioner-Kulwant Singh @ Raji having mobile No.98146-81969 his presence is shown near village Tharika, District Ludhiana from 11.05 AM to 12.25 PM. It is also stated that the witnesses PW-5 to PW-7 have not named the petitioner. In CRM-M- 35054-2017, learned counsel appearing for the petitioner-Hamir Singh has submitted that as per CCTV footage of Kaali Mata Mandir Patiala (Annexure P-2), he was 100 kms away from the place of occurrence and no specific role is attributed to him except that he was having a spade. He has also relied upon the statements of PW-5 and PW-7 to submit that petitioner is not named and rather PW-7-Gursewak Singh has deposed that his statement was recorded by the police not as per his version and Gurbachan Singh @ Billu, Gurdev Singh @ Pahariya, Harcharan Singh @ Baggi, Bittu, Minta and Harmir Singh were not involved in the murder of Ram Singh Komal. In CRM-M-25192-2017, learned counsel appearing on behalf of the petitioner-Avtar Singh @ Titan has also argued that there is no specific role attributed to the petitioner except that he was having a dang/wooden stick and he has been falsely implicated in this case because in an earlier FIR got registered against the deceased under Section 307 IPC, in which, he was a witness. In reply, learned State counsel, on instructions from the Investigating Officer and assisted by learned counsel appearing for the complainant has submitted that PW-5 has named Harjinder Singh @ Minta as Binta, however, his identity is not disputed and PW-6-Dalip Singh has named Hamir Singh and Kulwant Singh Raji. It is further submitted that even as per call details of the accused persons, they were at the distance of about 45 kms, therefore, they could have reached the spot within a period of one hour. It is also submitted on behalf of learned counsel for the complainant that the police did not record the statement of deceased-Ram Singh Komal, despite the fact that he remained alive for a period of one month after the occurrence and his son has recorded his statement in a compact disc and he had filed CRM-M-4132-2017 praying for proper investigation of the case and to take the CD so prepared in evidence, wherein the deceased had disclosed the name of all those who actually attacked him. It is further submitted that a supplementary challan was presented under Section 173 (8) of the Cr.P.C. and this Video CDs is now placed on record along with the

supplementary challan, in which, the deceased has named the petitioners. It is also submitted that the complainant-Gurmukh Singh, who is an eye witness and the informant of the FIR has not been examined so far and, therefore, the bail application be dismissed. In reply, learned counsels for the petitioner(s) have submitted that despite repeated adjournments taken by the prosecution and despite the fact that even non-bailable warrants have been issued against the said Gurmukh Singh, he is either not appearing in trial Court or when appears, he takes a date on one pretext or the other. It is also submitted that on the request of the Public Prosecutor, to enable him to file an application under Section 319 Cr.P.C., the trial Court has been adjourned the case to 26.03.2018 for filing such application and therefore, conclusion of the trial will be further delayed. Counsel for the petitioners have further submitted that petitioner-Harjinder Singh and Kulwant Singh are in judicial lock-up since October, 2016 and Hamir Singh and Avtar Singh are in Judicial lock-up since March, 2017. It is worth noticing here that in these four petitions, for the last few dates, the prosecution is taking time to enable the police to examine the complainant-Gurmukh Singh and on 01.02.2018, it was submitted that the trial Court has issued non-bailable warrants against him and then, on 27.02.2018, it was directed that the DSP will ensure that the statement of Gurmukh Singh be recorded on the next date of hearing. However, a perusal of the order dated 08.03.2018 passed by the trial Court, shows that though the statements of Harjit Singh (PW-5), Dalip Singh (PW-6) and Gursewak Singh (PW-7) have been recorded in the Court, the statement of complainant-Gurmukh Singh has not been recorded so far, rather the prosecution has requested the trial Court to grant time to file an application under Section 319 Cr.P.C. and the case is now adjourned for 26.03.2018 for filing the application and it is obvious that it will take sometime for the disposal of the such application as the accused have a right to file reply to the same. Despite the direction issued to the DSP on 27.02.2018, the statement of Gurmukh Singh has not been recorded so far. A perusal of the last few orders passed by the trial Court also show that the complainant Gurmukh Singh, despite issuance of non-bailable warrants, is not appearing for deposing in the Court. Without commenting anything on the merits of the case, the petitioners are granted interim bail subject to their furnishing bail/surety bonds to the satisfaction of the trial Court as the trial Court, on request of prosecution has adjourned the case for 26.03.2018 for filing application under Section 319 Cr.P.C. instead of recording statement of Gurmukh Singh and it may take long time and the petitioners are in judicial lock up since long. List again on 21.05.2018.”

Learned counsel for the petitioners further submits that noticing the fact that statement of complainant Gurmukh Singh has not yet been recorded as he is not appearing before the trial Court for several dates, the aforesaid order dated 14.03.2018, granting interim bail to aforesaid

co-accused, has been confirmed by this Court today itself.

Learned counsel for the petitioners further submits that subsequently, statement of Baljit Singh, grandson of deceased Ram Singh Komal, stands recorded as PW-9 and he has also not supported the prosecution version and was declared hostile.

Learned State counsel, on instructions from ASI Satwinder Pal Singh and assisted by learned counsel, appearing for the wife of deceased, has not disputed the factual position that till date, complainant Gurmukh Singh has not appeared before the trial Court and his statement has not been recorded so far.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the aforesaid submissions of learned counsel for the petitioners and also in view of the submissions noticed in the order dated 14.03.2018, the instant petitions are allowed. Petitioners Balwant Singh @ Kaka, Rajwinder Singh @ Raju and Gurdit Singh @ Manga are ordered to be released on regular bail on their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate concerned.

It is made clear that in case, the petitioners fail to appear before the trial Court or move an application for exemption from appearance, the regular bail granted shall be cancelled.

A photocopy of this order be placed on the file of other connected case.

December 14, 2018

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*