

Crl. Misc. No. M-2089 of 2019

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-2089 of 2019

DATE OF DECISION: 15.3.2019

Sarabjit Kaur

.....Petitioner

Versus

State of Punjab

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Ms. Sushma Chopra, Advocate
for the petitioner.

Ms. Bhavna Gupta, DAG, Punjab.

Mr. Salil Bali, Advocate
for the complainant.

DAYA CHAUDHARY, J.

Petitioner-Sarabjit Kaur has filed the present petition under Section 439 Cr.P.C. for grant of regular bail to her in case FIR No. 52 dated 24.2.2017 registered under Section 365 IPC and Sections 302,201 and 120-B IPC (added later on) at Police Station Sadar Zira, District Ferozepur.

Learned counsel for the petitioner contends that the petitioner has falsely been implicated in this case, whereas, she was neither named in the FIR nor any overt act was attributed to her. Initially the FIR was registered under Section 365 IPC against unknown persons but subsequently offences under Sections 302,201 and 120-B IPC have been added vide DDR No. 26 dated 5.3.2017 on the basis of statement made by

brother of the complainant and deceased, namely, Kanwaljit Singh. Learned counsel further contends that statement of the complainant and his brother, namely, Kanwaljit Singh is contradictory to each other and there is no direct witness of the alleged incident. As per statement of the complainant, he was informed about the incident by his brother, whereas, his brother Kanwaljit Singh has stated that he was told by one Chand that there is a CD about the incident but the same has not been taken into consideration during investigation. The case is based on hearsay evidence and after presentation of challan, charges have also been framed. The petitioner is behind the bars since 3.3.2017 and the bail petition filed by her before the trial Court was dismissed without giving any reasons.

Learned counsel for respondent-State has opposed the bail of the petitioner on the ground of seriousness of the offence. Initially the FIR was registered regarding missing of deceased-Gurjit Singh by his brother Harjit Singh but subsequently role of the petitioner and other accused was mentioned by another brother, namely, Kanwaljit Singh. Learned State counsel submits that the material witnesses are still to be examined and the petitioner does not deserve concession of regular bail keeping in view the seriousness of the offence.

Similarly, learned counsel for the complainant has reiterated the arguments advanced by learned counsel for respondent-State and contends that not only the offence is serious but custody is very less. Learned counsel further contends that there is no delay in lodging of the FIR and the alleged contradiction is not material.

Heard the arguments advanced by learned counsel for the parties and have also gone through the contents of the FIR and other

documents available on the file.

Admittedly, the FIR was registered on the basis of statement made by Harjit Singh stating that on 21.2.2017 his younger brother Gurjit Singh went outside after having meal in the night. Thereafter he made a call and informed the complainant that he was going with his friend and would come back in the morning. Thereafter his brother did not come back. Search was made to trace out the brother of the complainant but he was not found. Initially the FIR was registered under Section 365 IPC against unknown persons but thereafter offences under Sections 302,201 and 120-B IPC were added after recording statement of another brother of deceased, namely, Kanwaljit Singh, who has stated that he came to know from some secret sources that Gurjit Singh had been murdered as he was having illicit relations with one Sarabjit Kaur and his body was disposed of.

After hearing the arguments advanced by learned counsel for the parties, it is apparent that the case is based on circumstantial evidence and no direct evidence is there as initially the FIR was got registered for missing and subsequently after recording the statement of brother of the deceased, namely, Kanwaljit Singh, it was found to be a case of murder. As per subsequent statement of Kanwaljit Singh, deceased-Gurjit Singh was having illicit relations with Sarabjit Kaur. The issue of motive is also a matter of evidence, which shall be tested by the trial Court. A perusal of statement made by the complainant-Harjit Singh and subsequent statement made by Kanwaljit Singh clearly shows that the case is based on hearsay evidence as well as disclosure statement made by co-accused and confessional statement made by the petitioner, whereas, neither the disclosure statement made by co-accused nor confessional statement made

by petitioner while in police custody have any evidentiary value in view of provisions of Sections 25 and 26 of the Indian Evidence Act. Even statement of prosecution witnesses belie the theory propounded by Kanwaljit Singh because the prosecution itself has relied upon the statement of one Bhupinder Singh, who has allegedly overheard the conversation between the main accused and others, which would reveal that the murder has been committed by accused-Sukhchain Singh. It can be said that the case is based on extra judicial concession or at the most last seen evidence. The motive for commission of offence or false implication will be seen after recording the statements of the witnesses during trial.

Accordingly by considering the custody of the petitioner since 3.3.2017 and also the facts that the case is based on circumstantial evidence; trial may take some time to conclude and no purpose would be served by keeping the petitioner behind the bars, the present petition is allowed. Petitioner-Sarabjit Kaur is directed to be released on regular bail subject to her furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate.

15.3.2019
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes