

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102/4)

Date of Decision: 25.11.2020

1)

CRM-M-36901 of 2019

Surat Singh

...Petitioner

Versus

Central Bureau of Investigation

...Respondent

2)

CRM-M-50714 of 2019

Rafee Mohammed and another

...Petitioners

Versus

Central Bureau of Investigation

...Respondent

3)

CRM-M-51571 of 2019

Rajinder Singh and another

...Petitioners

Versus

Central Bureau of Investigation

...Respondent

4)

CRM-M-54804 of 2019

Mohan Lal

...Petitioner

Versus

Central Bureau of Investigation

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Vinod Ghai, Senior Advocate with
Mr. J.S. Mehndiratta, Advocate for
the petitioners in Sr. no.1 and 4.

Mr. ADS Sukhija, Advocate
for the petitioners in Sr. no.2 and 3.

Mr. Sumeet Goel, Standing Counsel for CBI.

Amol Rattan Singh, J. (Oral)

All the cases listed today have been taken up for hearing by
way of video conferencing because of the situation existing due to the

Covid-19 pandemic.

By these petitions, filed under the provisions of Section 439 of the Cr.P.C, the petitioners (in all these petitions) seek the concession of regular bail, upon FIR no.RC9(S)/2017/CBI/SC-1 New Delhi, dated 22.07.2017, having been registered at Police Station Central Bureau of Investigation, New Delhi, alleging therein the commission of an offence punishable under Sections 302 of the IPC (with the report under Section 173 of the Cr.P.C. submitted alleging therein the commission of offences punishable under Sections 120-B read with Sections 302, 330, 331, 348, 323, 326, 218, 195, 196 and 201 of the IPC, on 24.11.2017).

As recorded in the previous order dated November 23, 2020, the petitioners in all these petitions are of the ranks of a Sub-Inspector, an Assistant Sub-Inspector, and Head Constables and Constables in the Himachal Pradesh Police.

Admittedly they are all in custody for more than 3 years as of today. However, as already recorded in the previous order, the prosecution (the CBI) has been opposing their admission to bail on the ground that material witnesses still remain to be examined by the trial court, and therefore, they being police officials who are stated to have been present at the police station concerned, i.e. Police Station Kotkhai, District Shimla, at the time when the deceased (Suraj) is alleged to have died there due to police torture, they may influence such witnesses.

It is to be noticed that admittedly only 27 out of 103 prosecution witnesses have been examined and today Mr. Goel, learned counsel for the CBI, has sent to the Reader of this court (by way of a 'Whatsapp'

communication), a communication addressed to him by a Sub-Inspector in the CBI, giving therein the list of witnesses who may be influenced by the petitioners if they are admitted to bail.

The total number of such witnesses is shown to be 15, of which 4 are shown to be victims (with one being the wife of the deceased Suraj), and the remaining 11 witnesses shown to be, a retired Addl. SP and a serving Inspector, with the rest of them all being Constables.

Mr. Vinod Ghai, learned senior counsel appearing for the petitioners (in Sr. no.1 and 4) and Mr. ADS Sukhija, Advocate, for the petitioners (in Sr. no.2 and 3), all again reiterate today that with the Supreme Court initially even having admitted an Inspector General of Police who is an accused, to bail (though subsequently upon an application moved for cancellation of that bail, that application as allowed and his bail was cancelled), and the Himachal Pradesh High Court having admitted an SP and a DSP who are also accused, to bail, the present petitioners would not pose any threat as regards tampering of evidence, and therefore looking at the period of their custody, with the trial not progressing at a normal pace, they too deserve to be admitted to bail.

Mr. Goel, learned counsel for the CBI, on the other hand contends that as regards the Inspector General of Police and the Superintendent of Police who had been admitted to bail, they were not present at the police station concerned at the relevant time, though otherwise they are accused of being co-conspirators and responsible (as per the prosecution) for the death of the deceased, and as regards the DSP, though

he was present he was admitted to bail by the Himachal Pradesh High Court essentially on medical grounds (though the learned Single Judge has also stated that no other material had been brought to the notice of his Lordship, that they would in any manner be able to tamper with evidence) and consequently the present petitioners cannot be treated on the same footing.

He also cited judgments in the case of State through CBI v. Amarmani Tripathi, 2005 (4) RCR (Crl.) 280, CBI v. V. Vijay Sai Reddy, 2013(3) RCR (Crl.) 252, Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav, 2004 (2) RCR (Crl.) 254 and Gobarbhai Naranbhai Singala v. State of Gujarat & others, 2008(1) RCR (Crl.) 903, to submit that in the aforesaid circumstances, with the petitioners likely to tamper with the evidence and influence the witnesses, especially as most of the witnesses are Constables etc., (i.e. the same rank as the petitioners, and therefore would be more liable to be influenced by them), they do not deserve to be admitted to bail.

Having considered the matter, though otherwise counsel for the CBI would be correct in his submissions; however, looking essentially at the period of custody that the petitioners have already undergone, i.e. more than 3 years, with the trial nowhere near conclusion as yet, and admittedly with the DSP who is alleged to have been present at the spot at the time when the deceased died in the police station (as alleged) not being obviously bed ridden and therefore not entirely unable to influence the witnesses if at all they could be influenced, I would find no reason to refuse the petitioners the concession of being admitted to bail, simply on the ground of a long period

of custody and the stage of the trial. Such a long period of incarceration, with the trial nowhere near conclusion, virtually imposes a punishment of a sentence of imprisonment without them, obviously, having been convicted.

Of course, the circumstances of each case have to be seen individually even after such a long period of custody and in the present case, I would see no reason to not admit the petitioners to bail.

It of course also needs to be observed here that other than in the case of the aforesaid Inspector General of Police, i.e. Zahur Haider Zaidi, who had been admitted to bail by the Supreme Court but whose 'bail had been thereafter cancelled' on the ground that he was influencing the investigating team, it has not been brought to the notice of this court that any other person who has been admitted to bail has tampered with the evidence or has tried to influence the witnesses.

Consequently, without making any comment on the merits of the case, these petitions are allowed and upon the petitioners furnishing adequate bail and surety bonds to the satisfaction of the trial court and surrendering their passports to that court, and further, naturally, conditional upon them appearing before the trial court as and when summoned, they would be admitted to bail, during the pendency of the trial.

Naturally, if at any stage the petitioners are shown to have actually tampered with any evidence, including by influencing of witnesses, as was alleged in the case of the Inspector General of Police, the prosecution would be always at liberty to file an application for cancellation of bail in the case of any such petitioner.

These petitions are allowed in the aforesaid terms.

A copy of this order be placed on the file of the other connected matter too.

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25.11.2020
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(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable :No