

217

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

CRM-M No.11631 of 2021 (O&M)

Date of decision: 19.03.2021

Gosha Singh @ Tota

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. H.S. Jalal, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.08 dated 14.01.2019, for offence punishable under Sections 302, 201, 420, 120-B, 506, 34 of the Indian Penal Code, 1860 (in short 'IPC') registered at Police Station Nathana, Bathinda, District Bathinda.

Counsel for the petitioner, at the very outset, has relied upon the order dated 22.02.2021 passed in CRM-M No.42729 of 2020 (Annexure P3) vide which the co-accused of the petitioner namely Anter Singh, has been granted the concession of bail while relying upon the another order dated 15.09.2020 passed in CRM-M No.7863 of 2020, vide which another co-accused namely Jagdev Singh @ Jagga, has been granted the concession of regular bail. The operative part of the said order, reads as under:-

“...Learned counsel for the petitioner relies upon order dated 19.11.2019 passed by this Court in CRM-M Nos. 39046 & 39424 of 2019, vide which, two co-accused, namely Jagjit Singh and Malkeet Kaur, have been granted concession of regular bail. The operative part of the order reads as under:

“Learned counsel for the petitioners submits that as per allegations in the FIR, registered on the statement of Toga Singh, petitioner Malkeet Kaur was married to Nath Singh and three children were born out of the said wedlock. From her previous marriage, Malkeet Kaur has one girl child, who is also residing with her. Nath Singh had one brother Manga Singh @ Makka, who was unmarried. Both Nath Singh and Manga Singh @ Makka are deaf and dumb by birth. Mother of Nath Singh had brought one Jagga Singh @ Jagdev Singh from her relative, who was residing in the village for the last 10/12 years. Since many Court cases relating to the land were pending, petitioner Jagjit Singh, who was Patwari Halqa, used to help them in this manner. Manga Singh @ Makka was missing for many days and the complainant had gone to the house of Nath Singh to enquire about this fact and found that Jagdev Singh @ Jagga and petitioner Jagjit Singh, Patwari Halqa were threatening his brotherin-law’s daughter Malkeet Kaur that they have killed Manga Singh @ Makka and they will eliminate her as well. Upon inquiry, Malkeet Kaur informed him that petitioner, in conspiracy with Jagga, Antar Singh, Gosha Singh @ Total, have murdered Manga Singh @ Makka and are threatening her on account of acquisition of land of Nath Singh and Manga Singh @ Makka and are demanding money.

Learned counsel for the petitioners has further argued that petitioner Jagjit Singh has nothing to do with Nath Singh and Manga Singh @ Makka and their land was acquired in the year 2016. Learned counsel has placed on record photocopies of the cheques, which were issued by the Land Acquisition Collector, Punjab in the name of Nath Singh and Manga Singh @ Makka. The photocopies of the aforesaid cheques are taken on

record as Mark 'A'. It is further submitted that Manga Singh @ Makka died on 14.01.2019 i.e. 03 years, after the amount was received by him and the allegations against the petitioners are false, as even on earlier occasion, the complainant's son has registered an FIR under Section 376 IPC, in which the prosecutrix (daughter of Malkeet Kaur) has not supported the prosecution version and was declared hostile. The photocopy of statement of the prosecutrix dated 05.11.2019 is taken on record as Mark 'B'.

Learned counsel for the petitioners has next argued that in fact, the complainant, being the close relative of Nath Singh and Manga Singh @ Makka, himself has an eye over their property and the petitioners have been falsely implicated. It is further submitted that petitioner Malkeet Kaur was not nominated in the FIR and she has been named subsequently during the investigation that she has also actively participated in the murder of Manga Singh @ Makka. It is also submitted that except the statement of complainant, there is no other evidence regarding the conspiracy of committing the murder of Manga Singh @ Makka. Learned State counsel, on the basis of affidavit of the Investigating Officer/Inspector Shiv Chand, has four accused persons namely Jagdev Singh @ Jagga Singh, Jagjit Singh (petitioner), Antar Singh and Gosha Singh @ Tota. Later on, petitioner-Malkeet Kaur was nominated in the FIR and there are allegations of cheating against petitioner Jagajit Singh and allegations of murder of Manga Singh @ Makka are against remaining accused persons and now the case is fixed for recording the prosecution evidence. It is further stated in the affidavit that Manga Singh @ Makka was owner of 04 kanals of land and his mother Gurmail Kaur was also owner of 04 kanals of land and there was some exchange of land.

Learned counsel for the complainant has, however, argued that on account of the amount received from the Land Acquisition Collector, Punjab, Manga Singh @ Makka was murdered by the accused persons and petitioner Jagjit Singh is also facing trial for the offence punishable under Section 376 IPC, in which daughter of petitioner

Malkeet Kaur was the prosecutrix, however, he could not deny that in the said proceedings, the prosecutrix, while appearing as a witness, has not supported the prosecution version, as per her statement dated 05.11.2019 recorded by the Additional Sessions Judge, Bathinda and she has even stated that the FIR was got registered at her instance by exerting pressure, upon which the Public Prosecutor declared her a hostile witness.

After hearing learned counsel for the parties, without commenting anything on merits of the case and in view of the affidavit of the Investigating Officer that the primary charge against petitioner Jagjit Singh is under Section 420 IPC and also considering the fact that petitioner Jagjit Singh is in custody since 18.01.2019 and conclusion of the trial will take some time, he is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

Considering the fact that petitioner Malkeet Kaur was not initially named in the FIR and her name was surfaced during the investigation, in view of affidavit of the Investigating Officer and also in view of the fact that she is in custody since 18.01.2019, she is also directed to be released on regular bail subject to furnishing her bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.”

Learned counsel for the petitioner further submits that petitioner and co-accused Jagdev were also nominated in FIR No. 11 dated 19.01.2019, registered under Section 376-D IPC at Police Station Nathana, District Bathinda, at the instance of Ram Singh, son of the present complainant Toga Singh. It is further submitted that now the petitioner stands acquitted in the said FIR under Section 376-D IPC as the prosecutrix made a statement that she was pressurized by Toga Singh and his son Ram Singh to falsely implicate the petitioner in this case and, therefore, all the accused were acquitted in that case. A photocopy of the said judgment dated 02.03.2020

is taken on record as Mark 'A'.

Learned counsel for the petitioner further submits that now it is apparent that petitioner has falsely been implicated in the present case as well at the instance of complainant Toga Singh as even the allegations in the FIR are that when complainant Toga Singh visited the house of Malkeet Kaur, the petitioner and other accused were threatening her and later on, Malkeet Kaur was also implicated in the present case who has already been granted concession of regular bail as noticed above.

Learned counsel for the petitioner further submits that petitioner is in judicial custody for the last about 01 year and 08 months and till date, the complainant has not appeared before the trial Court despite taking repeated adjournments...”

For the sake of brevity, the facts are not reproduced again as the same are already noticed in the aforesaid order.

Counsel for the petitioner has further submitted that the allegations against the petitioner are on similar footing as of the co-accused Anter Singh and the petitioner is in custody for the last 02 years and 02 months and he is not involved in any other case.

Counsel for the petitioner has further relied upon the statement of Toga Singh/complainant, who appeared as PW-1 and did not support the prosecution version. It is also submitted that the said witness was declared hostile by the Public Prosecutor and even in the cross-examination of PW1, conducted by the Public Prosecutor, he has denied having made any such complaint to the police.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail. It is also not disputed that the petitioner is in custody for the

last 02 years and 02 months and he is not involved in any other case.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 02 years and 02 months; the co-accused of the petitioner have already been released on bail; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time due to COVID-19 situation, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

19.03.2021

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No