

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

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CRR-683-2021

Date of Decision : July 12, 2021

GURPREET SINGH ALIAS GOPI

.....Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ram Bilas Gupta, Advocate
for the petitioner.

Through Video Conferencing

JASGURPREET SINGH PURI. J. (Oral)

The present revision petition has been filed challenging the order dated 23.2.2021 whereby the petitioner has been summoned by the learned trial Court under Section 319 of the Code of Criminal Procedure.

The FIR came to be lodged under Sections 302, 328 and 120-B IPC on the statement made by Jaswant Singh that his marriage was performed about 14 years ago with one Mandeep Kaur daughter of Preetam Singh. They have three children. The elder daughter, namely, Simranjit Kaur was studying in her maternal home and the younger one whose name is Sukhmanpreet Kaur aged 11 years is studying in 6th class and the younger to her his son, namely, Gurpal Singh aged 9 years and his wife Mandeep Kaur had illicit relations with one Gopi son of Wassan Singh (petitioner). As per the FIR, he used to come to his house in his absence and used to have illicit relations with his wife. In this regard, he made to understand his wife many a times but his wife did not mend her

ways. About 12 days ago, he and his brother Kulwant Singh strictly prohibited Gopi and Mandeep Kaur from doing such things but both of them had told that if you will stop us from doing so, then they will kill them and their children and they did not stop from doing so and on 11.12.2018 his wife herself was getting ready for going somewhere and when he asked where are you going then she told that what do you want to say and that the petitioner has returned and that she was going to meet him and the complainant told her that he will inform about her mischievousness to her parents and that she told him that she will teach him a lesson. Thereafter, he went to the farms and his wife went somewhere alongwith both children and at about 12.00 noon, he came to know that his wife had given some poisonous substance to his both children and also had consumed the same. All the three of them had consumed poisonous medicine at Baba Raja Ram Sahib Gurudwara, Harchowal and they were admitted in corporate Hospital, Amritsar. Thereafter the complainant reached the ICU of the hospital where they were admitted and undergoing treatment and in the morning of 18.12.2018, the doctor had declared his daughter Sukhmanpreet Kaur as dead and declared his wife Mandeep Kaur and son Gurpal Singh as fit. His son Gurpal Singh himself told him that Gopi uncle (petitioner) and mother had forcibly given some substance to them by putting in bananas and she herself had eaten banana in front of them. It is further stated in the FIR that the wife of the complainant in connivance with the petitioner had given poisonous substance to their children with an intention to kill them and she herself has created drama of consuming the medicine.

During the course of investigation, earlier PO proceedings were initiated against the petitioner and thereafter the petitioner has been declared as innocent by the police. The challan was presented against Mandeep Kaur only and thereafter the trial commenced and during the course of trial, the son of the complainant, namely, Gurpal Singh, who had survived was examined as PW1 and the complainant was examined as PW2.

An application was filed under Section 319 of the Code of Criminal Procedure for summoning of the petitioner on the ground that PW1 Gurpal Singh son of the complainant was not only a survivor but is also an eye-witness to the entire incident and on the basis of the aforesaid evidence, the present petitioner has been summoned by the learned trial Court.

The learned counsel for the petitioner has submitted that the petitioner was found innocent and infact he was not even present at the spot where the alleged poisonous bananas were given to the children and even if the Tower locations are to be compared, it can be very well seen that the petitioner was not present at the spot. It has been submitted by the learned counsel for the petitioner that father of the petitioner who was posted in Guwahati had died on 8.12.2018 and his dead body came on 9.12.2018. He was cremated on 10.12.2018 and the alleged occurrence in the present case had taken place on 11.12.2018 and it was highly improbable that since the father of the petitioner had died on 9.12.2018 and the cremation took place on 10.12.2018, the petitioner could have

been involved on 11.2.2018 and the last rites were also performed on that day.

Learned Sessions Judge, Guraspur while dealing with the aforesaid application under Section 319 Cr.P.C. discussed the facts of the present case and also relied upon the statement of PW1 Gurpal Singh, who is son of the complainant aged 9 years wherein he had made clear cut allegations against the petitioner to connect him with the offence.

The statements of aforesaid Gurpal Singh as PW1 as well as Jaswant Singh PW2 have been attached alongwith the present petition as Annexure P-4. Learned Sessions Judge, Gurdaspur while referring to the statement of Gurpal Singh had observed that a perusal of statement of PW1 would show that the victim/eye witness Gurpal Singh had stated that accused-Mandeep Kaur had given some medicine in banana to him and his sister. Gopi (petitioner) was also present at that time but later on he had left. He and his sister started vomiting after eating banana. He went in the bathroom for vomiting. His sister did not vomit. She had eaten the medicine with water. The place was Raja Ram Gurudwara where his mother had given them medicine. Baba of Gurudwara saw him and his sister and he had brought them to hospital. His sister slept in the hospital in the night but she did not wake up in the next morning. He does not remember for how many days he was admitted in the hospital. The said PW1 was also subjected to cross-examination and he stated that the petitioner was not friend of his father but was friend of his mother and the petitioner used to come to the house in the presence of his father and he used to have interaction with his father. Furthermore the petitioner

had borrowed some money from his father. The other witness, namely, PW2 Jaswant Singh-complainant also stepped into the witnesses box and corroborated the prosecution story and proved his statement recorded by the police vide Ex. PA.

I have heard the learned counsel for the petitioner.

The petitioner has been summoned under Section 319 Cr.P.C. on the basis of the statements made by PW1 Gurpal Singh and PW2 Jaswant Singh. PW1 Gurpal Singh is a minor son of the complainant, who was allegedly given poison by his own mother by allegedly putting poisonous substance in the banana. The same was also allegedly administered to the sister of PW1 Gurpal Singh, who was of 11 years of age who unfortunately died. Later on the police exonerated the petitioner but after the statement recorded by the learned Sessions Judge, the petitioner has now been summoned on the basis of examination of Gurpal Singh, who was an eye-witness and also a victim as also the complainant. The argument raised by learned counsel for the petitioner that the petitioner was not even present at the time when the alleged occurrence took place cannot be accepted at this stage because such a plea of *alibi* can be taken at the time of trial and this Court cannot in exercise of powers of Revision arrive at a conclusion as to whether the plea of *alibi* is to be accepted or not. It is always a subject matter of the trial. Further more nothing is forthcoming at this stage to presume as to why a boy of the age of 9 years, who was victim at the hands of his own mother and an eye-witness would speak any lie. After perusal of the record and after hearing learned counsel for the petitioner, this Court

does not find any illegality or perversity in exercise of powers by the learned trial Court under Section 319 Cr.P.C. as the same is within the parameters of law.

In view of the above, no ground is made out for interference in the present case and, therefore, the present petition is, hereby, dismissed.

July 12, 2021
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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No