

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-19003-2019 (O&M)
Date of decision: 22.02.2021

Kulwinder Singh @ Soni

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Yagyaang Ajay, Advocate for
Mr. Kawaljyot Singh, 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 in FIR No.151 dated 23.07.2017 under Sections 459 & 460 IPC, registered at Police Station City South, District Moga.

Learned counsel for the petitioner relies upon the order dated 18.02.2021 passed in CRM-M-32038-2020, vide which co-accused Shiv Kumar @ Shiv has been granted the concession of regular bail. The operative part of the order reads as under: -

“”... Learned counsel for the petitioner submits that as per allegations in the FIR, registered at the instance of complainant

Chamkaur Singh, his elder brother Gurcharan Singh was living separately. On 23.07.2017, when they had gone for a morning walk and opened the gate, his sister-in-law informed that at night, some unknown persons came on their roof and caused injuries to her husband Gurcharan Singh on his head, forehead and neck with sharp edged weapons, as a result of which, he died. The accused persons, while leaving, had taken 08 tola gold and some currency in dollar as well as Indian currency. It is further submitted that as per statement of PW11 Inspector Jaskar Singh, during the investigation, he examined one Gurpreet Singh son of Jagjit Singh and he nominated two persons namely Lakhwinder Singh @ Jeon and Satwinder Singh @ Seera regarding their involvement in the commission of offence and they were arrested and their mobile phones were taken. One Kulwinder Singh was also nominated as an accused on 16.01.2018 and on the basis of his disclosure statement, three persons i.e. Bablu, Ravi and petitioner Shiv Kumar were nominated. Thereafter, an application for discharge of Satwinder Singh and Lakhwinder Singh was moved and they were discharged by the Court.

Learned counsel, with reference to cross-examination of PW11, further submits that in the disclosure statement of Kulwinder Singh or in the disclosure statements of three other accused persons, no further evidence has come on record to

connect the petitioner with the commission of offence. Learned counsel has referred to statement of PW2 Amar Singh, who has stated that he saw petitioner Shiv Kumar along with Bablu and Ravi, while sitting in a Dhabha and discussing that on asking of co-accused Kulwinder Singh, they had gone to house of Gurcharan Singh to commit theft and when Gurcharan Singh identified Kulwinder Singh, they committed his murder. It is further submitted that in cross-examination, this witness has stated that he did not disclose the incident to any person of the village though he further stated that he had gone to house of Gurcharan Singh, after the occurrence, to know about the well-being of his wife, as they are relatives. It is also submitted that it is a matter of trial whether this witness is a reliable witness, as on one hand, he did not disclose the incident to any person immediately and on the other hand, he claims himself to be the relative of deceased Gurcharan Singh. Similarly in the statement of PW3 Nihal Singh, there is no direct allegation against the petitioner.

Learned counsel for the petitioner has further submitted that despite the fact that the petitioner is in custody for the last more than 03 years; the trial remained standstill for a period of about 01 year due to COVID-19; the case is still at the stage of recording the prosecution evidence; all the material witnesses including the Investigating Officer has been recorded, therefore,

there is no possibility of tempering with the prosecution evidence.

Learned State counsel has filed the custody certificate dated 17.02.2021 in the Court today, a perusal of which shows that the petitioner is in custody for the last 03 years and 23 days and is not involved in any other case. It is not disputed that statement of all the material witnesses as well as Investigating Officer has been recorded.

Without commenting anything on merits of the case, considering the aforesaid facts and circumstances of the case, this petition is allowed and the petitioner 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, concerned.”

Learned counsel for the petitioner submits that the petitioner is in custody for the last 03 years and 22 days. It is further submitted that private witnesses have already been recorded and testimony of PW2 Amar Singh is yet to be seen by the trial Court at the time of final disposal.

Learned State counsel has filed the custody certificate dated 20.02.2021 in the Court today and has opposed the prayer for bail on the ground that the petitioner is involved in some other FIRs including one case under NDPS Act.

In reply, learned counsel for the petitioner has submitted that the petitioner is on bail in other cases.

After hearing learned counsel for the parties, without commenting anything on merits of the case, considering the fact that the petitioner is in long custody of more than 03 years and co-accused has already been granted the concession of regular bail, this petition is allowed and the petitioner 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, concerned.

However, it is made clear that in case the petitioner is found misusing the concession of bail or extending threat to any of the prosecution witness or found involved in any other case subsequent to release on bail in this FIR, it will be open for the trial Court to cancel the bail.

[ARVIND SINGH SANGWAN]
JUDGE

22.02.2021
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No