

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-36391-2021

Date of decision : 22.12.2021

Varinderpal Singh alias Bindu

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Vipul Jindal, Advocate
for the petitioner.

Mr.Sarabjit Singh Cheema, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

This is a first criminal miscellaneous petition under Section 439 Cr.P.C. praying for the concession of regular bail pending trial in FIR no.175 dated 09.08.2020 registered under Section 302 IPC at Police Station Dasuya, District Hoshiarpur.`

Brief facts of the prosecution case are that an FIR bearing no.175 was registered on 09.08.2020, on the basis of the statement of Buta Singh to the effect that his younger brother Angrej Singh, was member of the Panchayat and on account of illness of Sarpanch, was taking care of the panchayati work and on the morning of 08.08.2020, when Angrej Singh had come home after seeing the work in the evening around 7.45PM/8.00 PM in his car bearing no.PB08BU-7355 of make Alto, went to the village, upon reaching the area near Pandher Kiln Bau Krishan at village Tihara, some unknown persons in a white coloured car encircled the brother of the complainant and injured him with a sharp edged weapon. It is further

alleged that the moment the complainant came to know about the same, he reached the spot and after making arrangements for transportation, took the injured to Civil Hospital, Dasuya where the doctor declared him dead. On the basis of the said statement, the present FIR was registered.

Learned counsel for the petitioner has submitted that in the present case the petitioner was not named in the FIR as the FIR was against unknown persons. It is further argued that in fact as would be apparent from the subsequent prosecution version, the said Buta Singh was known to the petitioner and thus, in spite of the said fact, the petitioner was not named in the FIR. It is further submitted that supplementary statement was given by the said Buta Singh on 11.08.2020 and in the said supplementary statement it was stated by said Buta Singh that he was in a state of shock at that time and had submitted that the petitioner and his co-accused Jaspal Singh used to threaten his brother Angrej Singh and that in fact on the date of occurrence, the petitioner and Jaspal Singh had kept a *datar* in their presence and the said fact was ignored by the complainant. It is further argued that the said supplementary statement has apparently been made only to falsely implicate the petitioner. It is not possible to believe that the complainant had seen the petitioner keep a *datar* in his presence then, such a vital point could not have been missed out by the complainant in his initial statement. It is further submitted that the said complainant has been examined as PW-1 and in his examination-in-chief, he had stated that some unknown persons had committed the murder of Angrej Singh and he did not know the name of the accused persons nor could he identify the accused persons who were present in the Court then and has further submitted that the police had taken his signatures on blank papers. It is also highlighted

that in the cross-examination it has been stated that from the place of occurrence, blood as well as the weapon used in the commission of offence, i.e. *datar* and *khanda* were taken into possession by the police and challan to the said fact that recovery of said *khanda* has been effected from the petitioner on 20.08.2020, is false. It is further stated that beyond the evidence of the complainant with respect to not supporting the case of the prosecution, only material evidence against the petitioner is that of Attinderpal Singh, who is stated to be an eye witness. In this regard, it is submitted that said Attinderpal Singh had got his statement recorded on 01.09.2020 under Section 161 Cr.P.C., i.e. after an unexplained delay of 21 days. It is also argued that in his first statement recorded on 01.09.2020 he had stated that the incident in question took place on 09.08.2020, which was factually incorrect inasmuch as the incident had taken place on 08.08.2020. It is argued that as far as the second statement recorded on 01.09.2020 is concerned, the same is not signed by the said Attinderpal Singh and the said statement also stated the date of incident to be 09.08.2020. It is further argued that it is highly strange that two statements under Section 161 Cr.P.C. have been recorded of the same witness on the same date. Reference has been made to the evidence of said PW-2 and his cross-examination and it has been highlighted that several improvements to the same have been made by the said witness. It is further submitted that in fact the said person was present in the police department and the non-recording of the statement under Section 161 Cr.P.C., would show that he is a planted witness. It is also highlighted that said witness is involved in two other cases and has a criminal background. It is further stated that the story concocted by the prosecution with respect to the delay of 21 days, is extremely doubtful. It is

further stated that the petitioner has been in custody since 20.08.2020 and there are as many as 21 prosecution witnesses out of which only two witnesses have been examined and thus, the trial is likely to take time moreso, in view of the present pandemic and thus pray for regular bail has been made.

Learned State counsel has opposed the petition for regular bail on the ground that the present case is a case of eye witness account and said eye witness Attinderpal Singh on 01.09.2020 had stated that he saw four youths parking their Santro car in front of the Zen car of Arjun Singh and said four youths had inflicted injury upon the said Arjun Singh. He had also stated that he had recognized two persons at the time of alleged incident i.e. Varinderpal Singh and Jaspal Singh and two other persons are stated to be 18/20 years of age. It is further stated that even the complainant has turned hostile, but since the involvement of the petitioner is prima facie shown from the statement of PW-2, the present petitioner does not deserve the concession of regular bail.

This Court has heard the learned counsel for the parties and has perused the paper book.

It is not in dispute that present FIR was registered on 09.08.2020, on the statement of Buta Singh to the effect that the incident in question had taken place on 08.08.2020 wherein, brother of the complainant, i.e. Angrej Singh had died. The, the FIR was registered against unknown persons.

Learned counsel for the petitioner has pointed out that the complaint was made against unknown persons in spite of fact that said Buta Singh was known to the present petitioner as would be apparent from the

supplementary statement dated 11.08.2020. It is in the supplementary statement dated 11.08.2020, that the complainant had for the first time named the petitioner as well as co-accused Jaspal Singh. The reason given for not naming the petitioner in the first statement is stated to be that he was in a state of shock. The said Buta Singh has been examined as PW-1 and relevant portion of his examination-in-chief is reproduced hereinbelow:-

“PW-1 Boota- Singh son of Sh, Ramji Dass, R/o village Ragowal, PS Dasuya, Distt Hoshairpur.(ON SA).

Stated that I am a taxi driver and I am resident of above said address. On 09.08.2020, in the evening time some unidentified persons committed the murder of Angrej Singh. I do not know the name of the accused persons. I cannot identify the accused present in the court. Police met me in this case and took my signature on the blank papers and told me that they will solve the case and I do not know what investigation was carried out by the police.”

Perusal of same would show that he has specifically stated that some unidentified persons had committed murder of Angrej Singh and he could not identify the accused persons who were present in the Court and the police had taken his signatures on blank papers. In the cross-examination of the said witness by counsel for the petitioner, he had stated that from the place of occurrence, alleged weapon *datar* and *khanda* were taken into possession by the police and thus, the said evidence is against the version of the prosecution inasmuch as, the *khanda* was allegedly recovered from the petitioner on 21.08.2020. In the said circumstances, primary evidence against the petitioner is that of Attinderpal Singh. The said Attinderpal Singh had given his statement on 01.09.2020, which is after an

Cr.P.C., it has been stated that the incident had taken place on 09.08.2020 whereas in actuality, the incident had taken place on 08.08.2020. In fact, the said Attinderpal Singh had given the details as to what had happened and transpired on 09.08.2020. As per his statement under Section 161 Cr.P.C., said Attinderpal Singh stated that it was on account of fear, he did not disclose anything to any person in this regard. Said PW-2 has been examined in pursuance of orders passed by this court and the cross-examination of said witness is reproduced hereinbelow:-

“I am graduate and passed my graduation in the year probably 2014. I remained in the Punjab police Department. I enrolled in the Punjab Police on 01.11.2011 as Constable. I do not remember my number. Again said probably 3551. Firstly, I was posted at Jalandhar City as Constable. I remained posted in Jalandhar for about 5 years and my total job is about 6 years span. During this period, I remained posted with higher police officials as a gunman and also remained posted as Santri in the police station. I also remained posted at Barnala, where I was allotted police No. 152. Jaspreet Singh Jassi is my another brother who is still in the Punjab police and is younger to me. He might be recruited in the Punjab Police in the year 2012-13. I was aware about the functioning of the police when I was in the police department. As one FIR was registered against me U/s 307 read with 120-B IPC and I was inducted in the said FIR U/s 120-B PC, so was the reason I leave my job as a false case was registered against me. The said FIR was registered against me in the year 2017 in PS Haryana, Distt Hoshairpur. The said FIR was got registered by the Police of PS Haryana with regard to some incident of attack on the police party. Volt, at the time of incidence I was not present at the

place of occurrence and was present at my place of posting at Barnala. It is correct that with regard to the above said incident inquiry was hold by the department and I was suspended by the Department. I am not in the service till today. I remained in the Jail for about 11 months at Hoshairpur. The said case is still pending and the challan has been presented against me by the police and the case is pending in the Session Court at Hoshiarpur. It is correct that FIR No. 86 dated 25.08.2014 U/s 21-61-85 of NDPS Act was registered by the police of PS Chabbewal against me. Volt, I have been acquitted. In the present case, I remained in jail for about 50 days and thereafter released on bail by the Court. I knew one person namely Ankhi and said Ankhi was murdered at Toll Plaza. In the said case I was also joined in investigation by the police with regard to the murder case of Ankhi. It is incorrect to suggest that in fact in the case of murder of one Shanna, I was also interrogated by the police. Except the above said cases, no other criminal cases was registered against me in any police station. It is incorrect to suggest that I was interrogated by the police in so many case because of reason that I am having criminal background.

It is correct that my statement was recorded by the police on 01.09.2020. It was got recorded by me in my statement dated 01.09.2020 Mark DA that I talk Angrej Singh on my mobile bearing No. 8557905400 on whatsapp who said that I would come after 20 mins but I was alone at Saw mill then, I left the saw mill and went towards village Raghawal. The witness is confronted with Ex. Mark DA where it is not so recorded. It is also got recorded in my police statement Mark DA that the car of Angrej singh was ran over the heap of earth and car sentro was parked in front of Alto car. The witness is confronted with Ex. Mark DA where it is not so

recorded. It was also got recorded by my in my police statement Mark DA that firstly accused Varinder and Jaspal attacked Angrej Singh in the car then Jassi and Bindu taken out Angrej Singh from the car and gave injuries and the lights of my car top model Buleno car Alpha and my said was containing Lens light. The witness is confronted with Ex. Mark DA where it is not so recorded. It was also got recorded in my statement when I got down from my car in the meantime, Jassi and Bindu were causing injuries on the head of Angrej Singh with their respective weapons and the other co-accused Jassi and Bindu chased towards me but I ran away and rescued myself and I made telephonic call to ASI Lakha and said that the above said accused was causing the injuries to Angrej Singh. Lakha said to me you reach at when I reached at PS Dasuya and information was already received. The witness is confronted with Ex. Mark DA where it is not so recorded. It was also got recorded in my statement that I also made telephonic call to Prince to look after the Angrej Singh and bring him to hospital and Prince again said to me that Angrej was killed by the accused then I taken out the injured from the ambulance but doctor declared Angrej Singh dead those two persons were also accompanied in the ambulance and I asked to them who disclosed me that we are nephew to Angrej Singh. The witness is confronted with Ex. Mark DA where it is not so recorded. It is also got recorded in my statement that in the year 2011, Bindu along-with other co-accused attacked the Angrej Singh who received 273 stitches on his body and FIR U/s 307 was registered and due to this case, the accused were compelling for compromise but Angrej Singh could not compromise the matter due to which accused killed Angrej Singh. Earlier, accused pressurized more to compromise the matter due to which Angrej Singh took

the accommodation on rent at Vijay Nagar, Kothi No. C-41, Jalandhar about 1 year. The witness is confronted with Ex. Mark DA where it is not so recorded. I also got recorded the date of incident in my police statement Mark DA as 08-08-2020. The witness is confronted with Ex. Mark DA where it is not so recorded. The date 09-08-2020 was not got recorded by me in my statement Mark DA. The witness is confronted with Ex. Mark DA where it is so recorded in point A to A1. Volt, the police was not listen to me and they recorded it at their own.

From the place of murder I made telephonic call to ASI Lakha who posted at Ps Dasuya. On phone, I informed ASI Lakha that accused Jassi is giving injuries on the person of Angrej Singh and he advised me that I should make telephonic call regarding the occurrence to the PS Dasuya and he is also going to inform the Police of Dasuya. As I was not having the phone number of police Dasuya so I did not call there, however I personally reached police Station Dasuya. I reached at police station Dasuya within 8-10 mins on that day. From the gate of the police station santri disclosed me that the SHO and investigating officer has already left for the place of occurrence to inquire the matter. From the police station again left for the place of murder however on the way Prince told me that they had reached civil hospital Dasuya with Angrej Singh so I reached there. At that time, the police was not present there however some boys were present there. I remained in the civil hospital Dausya for about 45 mins. During the said period the police did not reach there. Thereafter, I came back to my house. On that night, I did not visit the police station Dasuya however on 09.08.2020, I reached police station in the morning at 16 about 7:00/8:00 A.M. I disclosed the entire incidence which I have stated today in the court in my examination

in chief to the SHO police station Dasuya. The SHO provided two police officials to me including Lakha referred above to check the CCTV Footage I asked them to record my statement with regard to the murder of Angrej singh as the death was caused by Jassi and Bindu and I wanted to become the complainant in this case but, police officials said to me that the FIR would be registered by his brother because there are chance you would be won over by the accused party and I also said to them the police officials that the brother of the deceased was not present at the time of occurrence. I did not inform the Sr. police officials with regard to the incident which was in my knowledge but none listen to me. I never met the SSP, Hoshairpur nor I met the DSP of the area. Again said, I went to the office of SSP Hoshiarpur but from the office they disclosed me that the SSP, Hoshiarpur has recently joined from two days and they do not met anybody. The story of the murder did not publish in any newspaper except one small newspaper. I did not move any written application with regards to the fact that I am the eye witness of the alleged occurrence to anybody or to any high ups even till today. The police clear on 09.08.2020 about the involvement of the accused in the present case so, I did not move any application. I do not know if the FIR of the present case was registered on the statement of Boota Singh brother of the deceased on 09.08.2020. I do not know if Boota Singh gave the statement to the police upon which FIR has been registered that some unidentified persons committed the murder of Angrej Singh. Boota Singh was saying he do not want any action against anyone and was not interested for the registration of the case. It was not got recorded by me in my statement Mark DA that as prior to 01.09.2020 I was under threat so was the reason I did not disclose the incident to anybody and now today

I am disclosing about the occurrence. The witness is confronted with portion B to B1 where it is so recorded but the witness denied having made such statement to the police. Volt, the police recorded this fact at their own. The police recorded my statement Mark DA by calling me in the police station on 01.09.2020. I have gone through the statement Mark DA at that time and told them that statement Mark DA is not correct statement of mine. Volt, the police officials told me that the statement Mark DA is to be recorded in their way and I can depose what is in my knowledge in the Court. Prior to today, in writing I have not disclosed the above said fact which I have stated in my examination in chief to anybody including any high ups, court or any police officials. Volt, orally the above said facts were in the knowledge of everyone. I have not filed any criminal complaint in the court or in the Hon'ble High Court nor I have hold any press conference with regard to the alleged occurrence. Volt, as the accused were arrested by the police in this case.

I have witnessed the alleged occurrence for one and half hour. When I reached at the spot the occurrence was already going on. Except the light of my vehicle no other light arrangement was there. Volt, the lights of the car Angrej Singh were on that time. I have not intervene to save Angrej Singh. I have not raised any raula to attract the other persons. Volt, I have only gave lalkaras to the accused party.

It is incorrect to suggest that no such incidence ever took place in my presence and I have concocted a false story today in the court just to blackmail the accused party with whom I am having inimical relation. It is further incorrect to suggest that none of the accused caused any injuries tot Angrej Singh as alleged as I was present at the place of occurrence. It is further incorrect

to suggest that I have wrongly stated that the police was not listening to me and it is further wrong to suggest that I have stated wrongly in my volunteered portion. is further incorrect to suggest that I am having a criminal background and was insisting the accused party to party with money to which they flatly refused so, I gave a false statement today in the court.”

A perusal of the above would show that with respect to the delay of non-recording of the statement, the said witness has given a different version than that given in the statement under Section 161 Cr.P.C. and regarding the same he had stated that he had gone through the statement Mark DA and the same is incorrect and the police officials had told the said witness that statement Mark DA is to be recorded in their way/manner and was thus recorded accordingly. Further perusal of the said statement would show that the said witness was in the Punjab Police and was subsequently suspended and then left his job. There were two FIRs against the said witness, one was under Section 307 IPC and the other was under the NDPS Act on account of which the said witness was in custody for 11 months and 50 days respectively. The said witness was also stated to have been joined in the investigation with respect to the murder case of one Ankhi. A perusal of the above statement would show that the complainant has made several improvements in his statement including the fact with respect to Whatsapp call, the car of Angrej Singh running over heaps of earth and evidence regarding the car lights and the fact as to whether the said witness called up ASI Lakha Singh and informed him about the incident and him having called up Prince to look after Angrej Singh and several other factors. It has also been stated by the said witness that he had gone to the police station on

get the FIR registered. The arguments of learned counsel for the petitioner to the effect that it is highly doubtful that said witness being a police official himself would not know for a period of 21 days, that he had to get statement under Section 161 Cr.P.C. recorded even in case the FIR has been registered by some other person, cannot be brushed aside. From the said statement it is also clear that he had seen the occurrence for 1½ hours but nothing was done in order to protect the said Angrej Singh inasmuch as neither any person was called by him nor any person much less the police was called by him to save Angrej Singh. Suggestion has been given to the said witness to the effect that he is demanding money from the accused person on account of which the petitioner has been falsely implicated. The petitioner has been in custody since 20.08.2020 and out of 21 prosecution witnesses, only two material witnesses have been examined and 19 witnesses are yet to be examined and thus, the trial Court is likely to take time moreso, in view of the present pandemic. It would be a matter of trial as to whether the petitioner could be involved in the present case on the basis of statement of Attinderpal Singh, who has been examined as PW-2. This Court however, after considering the custody period of the petitioner and also, after taking into consideration the above stated evidence of PW-1 and PW-2 including the fact that there is 21 days delay in recording the statement of PW-2 under Section 161 Cr.P.C. and the fact that the petitioner was not initially named in the FIR, is of the opinion that the petitioner deserves the concession of regular bail.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him

not being required in any other case.

It is however made clear that in case the petitioner influences any witness then it would be open to the State to move an application for cancellation of bail of the petitioner.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

December 22, 2021
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No