

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

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(1)

CRM-M-48177-2019

Date of decision: 11.01.2021

Jaswinder Singh @ Amna

.....Petitioner

Versus

State of Punjab

.....Respondent

(2)

CRM-M-29598-2020

Date of decision: 11.01.2021

Jaspal Singh @ Pala Granthi

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Anterpreet Singh, Advocate
for the petitioner in **CRM-M-48177-2019**.

Mr. Zubin Chhura, Advocate
for the petitioner in **CRM-M-29598-2020**.

Mr. Sukhbeer Singh, Asstt. A.G., Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J. (ORAL)

(The cases has been taken up for hearing through video conferencing.)

Petitioner-Jaswinder Singh @ Amna has filed **CRM-M-48177-2019** and petitioner-Jaspal Singh @ Pala Granthi has filed **CRM-M-29598-2020** under Section 439 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for grant of regular bail in case FIR No.34 dated 04.04.2019 registered under sections 201, 302 and 364 read with Section 34 of the Indian Penal Code, 1860 (for short, "the IPC") in Police Station Hathur, District Ludhiana (Rural).

The above said FIR was registered on statement of Bhajan

Singh. In his statement Bhajan Singh inter alia alleged that on 06.03.2019 his son Sony Singh left the house and telephonically informed him that he was going out of station due to business and would not come in the night. Sony Singh did not return for many days on which they started searching for him and lodged missing report No.19 dated 14.03.2019 in Police Station Hathur. His nephew Avtar Singh told him that Sony Singh met him on 06.03.2019 at about 07:30 P.M. near Bangran (Sath) Chowk and told him that he had love affair with Amarjit Kaur @ Bholi who had called him to her house from whom he was to take back borrowed amount. In view of the said information and from the enquiry conducted by him, he was sure that Amarjit Kaur @ Bholi, her husband Granthi Jaspal Singh and their elder son Jaswinder Singh @ Amna called his son Sony Singh at their house and killed him due to illicit relations of Sony Singh with Amarjit Kaur and concealed his dead body. Pursuant to registration of FIR, the police investigated the case. During investigation, decomposed dead body was recovered from canal in the area of village Samalsar, District Moga which was cremated unidentified. The dead body was identified from the photographs and remains by the complainant to be that of his son Sony Singh despite the fact that in the post mortem report the dead body was stated to be that of a middle aged female. Sample of burnt bone sent to FSL, Punjab SAS Nagar (Mohali) was returned due to lack of requisite testing facility but the same was not sent to some other FSL by the Police. The petitioners were arrested in the case and recovery of T-shirt and the lower of deceased Sony Singh, electric wire and chunni

was allegedly made from their possession in accordance with their disclosure statements.

The petitioners being in custody have filed the present petitions for grant of regular bail.

The petitions have been opposed by learned State Counsel in terms of status report and additional reply filed by way of affidavit of Sukhnaaz Singh, PPS, Deputy Superintendent of Police, Sub Division Raikt, Police District Ludhiana (Rural) in CRM-M-48177-2019.

In view of the facts and circumstances of the case, vide order dated 16.12.2020 passed in CRM-M-48177-2019, presence of Director, FSL, SAS Nagar, Mohali, Punjab and Senior Superintendent of Police, Ludhiana (Rural), concerned SHO and investigating officer of the case before this Court through video conferencing was ordered.

In compliance with the above said order, Mr. Charanjit Singh Sohal, IPS, SSP, Ludhiana (Rural), Mr. Sukhnaaz Singh, PPS, DSP Raikot, Ms. Arshpreet Kaur Grewal, SI/SHO, P.S. Hathur and Mr. Tarsem Singh, ASI/LR P.S. Hathur and Dr. Seema Sharda, Director, FSL, Punjab and Dr. Sanjiv Kumar, Scientific Officer, Serology, Punjab have appeared before this Court through video conferencing.

Director, FSL, SAS Nagar, Mohali has submitted that sample of burnt bone sent to FSL was returned as in such case autosomal STR analysis could not yield DNA profile and was not suitable method for analysis and the same could be analysed using mitochondrial DNA analysis which was not available at FSL, SAS Nagar, Mohali, Punjab.

Mr. Charanjit Singh Sohal, Senior Superintendent of Police, Ludhiana (Rural) has submitted that on return the sample was not sent for DNA analysis as the complainant and his family members were satisfied that the dead body was not that of Sony Singh and on further investigation carried out by the police, charge-sheet was filed while mentioning that the dead body had been destroyed by the accused.

Possibly there could be no objection to return of sample by FSL, Punjab SAS Nagar (Mohali) in view of the reason of lack of testing facility but preferably the same should have been sent to or returned with advice to send the same to the FSL where the requisite testing facility was verified to be available. The deliberate omission by the police to send the same to some other FSL for the projected explanation can not be said to be justified as discovering the identity of the deceased was essential. Now the accused are stated to have been prosecuted on the basis that the dead body of the deceased was destroyed and was not recovered on the assertion that family members of the deceased have so admitted but even during trial complainant Bhajan Singh testified the dead body recovered to be that of his son while other members of family are not admittedly cited as prosecution witnesses.

In view of the fact situation where further DNA analysis of the sample is claimed to be unnecessary, I leave the matter of analysis of DNA sample to the decision of the Investigating Agencies. However, for reasons of propriety and to rule out

uncertainty/speculation it would be reasonable to expect that in future in such cases where the sample is returned to the police, the same should be sent to FSL where requisite testing facility is available.

I have heard learned Counsel for the petitioners and learned State Counsel and gone through the relevant record.

Learned Counsel for the petitioners have submitted that the petitioners have been falsely implicated in the case. Initially missing DDR No.19 dated 14.03.2019 was lodged with the police without naming anyone. The petitioners and Amarjit Kaur @ Bholi have been falsely implicated in the case due to party faction in the village. Dead body of Sony Singh was not recovered and in the absence of recovery of dead body it could not be asserted that the petitioners and Amarjit Kaur @ Bholi had murdered Sony Singh. Complainant Bhajan Singh had been examined in the case as PW-2 and he had not said anything against the petitioners and Amarjit Kaur @ Bholi and turned hostile. The dead body claimed by the complainant to be that of his son was mentioned in the post mortem report to be that of middle aged female. The sample of burnt ashes was not sent to FSL for DNA analysis for identification of the dead body. Alleged planted recovery does not incriminate and there is no cogent direct or circumstantial evidence as to commission of the alleged offence by the petitioners and Amarjit Kaur @ Bholi. There was no reason for the petitioners and Amarjit Kaur @ Bholi to make any extra-judicial confession and the evidence in this regard is manipulated. The trial is likely to take long time due to restrictions imposed to prevent the spread of Covid-19. No useful

purpose will be served by further detention of the petitioners in custody. Therefore, the petitioners may be granted regular bail.

On the other hand, learned State Counsel has submitted that the petitioners and Amarjit Kaur @ Bholi murdered Sony Singh on account of his illicit relations with Amarjit Kaur @ Bholi. The petitioners and Amarjit Kaur @ Bholi made extra-judicial confession before Harbans Singh, Sarpanch, Gram Panchayat Village Malha. Recovery of clothes of the deceased electric wire and chunni was made from possession of the petitioners and Amarjit Kaur @ Bholi. The sample of burnt ashes was not sent for DNA analysis by mitochondrial analysis method as subsequently the members of the family of the complainant acknowledged that the dead body recovered was not that of Sony Singh. There is sufficient circumstantial evidence to prove commission of the subject offences by the petitioners and Amarjit Kaur @ Bholi. In view of the nature of accusation and gravity of the offences, the petitioners do not deserve grant of regular bail. Therefore, the petitions may be dismissed.

Keeping in view the above referred facts and circumstances of the case, nature of accusation and evidence against the petitioners, period of their custody and the fact that the trial is likely to take long time due to restrictions imposed to prevent the spread of Covid-19, but without commenting on the merits of the case as the same may prejudice case of either of the parties, I am inclined to extend the concession of regular bail to the petitioners.

In view of the above, the petitions are allowed and the

petitioners are ordered to be released on regular bail on furnishing of personal and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

Before parting with the order, I am constrained to observe that in such cases where the dead body is not recovered or the identity of the dead body is seriously disputed or is in doubt, the Investigating Agencies/the Prosecution must make all efforts to collect and produce before the Court all possible material/evidence direct or circumstantial conclusively establishing identity of the dead body and incriminating the suspects and there should be no arrest and prosecution merely on suspicion or for pacification of the complainant, howsoever influential or aggrieved he may be and the Trial Court must also make an effort to discover the truth and determine the question of guilt or innocence by making all possible efforts for recording of all such evidence as may be available. Further, the Court must in such cases award compensation to the dependents of the victim and costs to the State in case of conviction of the accused but in case of acquittal direct the complainant and the State to pay adequate compensation to the accused.

It would also be appropriate that the Director General of Police, Punjab and the Director, FSL, Punjab also consider the desirability of the procedure to be followed, in case of return of sample for lack of testing facility for analysis, for sending the same to FSL with requisite testing facility and issue appropriate instructions in this regard so that the matter is not left to arbitrary decision of the concerned Investigating Officer/Official which may be later found to be wholly

unwarranted/unjustified.

A copy of this order be supplied to learned State Counsel and be also sent to the Director General of Police, Punjab, the Director, FSL, Punjab and the concerned learned District & Sessions Judge for ensuring requisite compliance.

A photocopy of this order be placed on the file of other connected case.

11.01.2021

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(ARUN KUMAR TYAGI)
JUDGE

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