

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

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**CRM-M-8911-2022 (O&M)  
Date of decision: 08.09.2022**

**Dharminder****...Petitioner**

**Versus**

**State of Punjab****...Respondent****CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present:- Mr. Aman Deep Singh Rai, Advocate and  
Mr. Avtar Singh Sandhu, Advocate  
for the petitioner.

Mr. S. S. Goripuria, DAG, Punjab.

**ARVIND SINGH SANGWAN, J. (Oral)**

This is the second petition that has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 97 dated 16.06.2019, registered under Section 302 IPC at Police Station PAU, Ludhiana.

The first petition, bearing CRM-M-5452-2020, was dismissed as withdrawn on 30.07.2021.

Learned counsel for the petitioner submits that the new ground for filing the present petition is that the petitioner is in long custody of more than 03 years and 02 months and despite repeated notices issued by the trial Court, the complainant is not coming forward to record his statement.

Brief facts of the case are that the present FIR was registered at the instance of complainant Kavita Kumari that on 15.06.2019, her husband, namely Upinder Mahto, had gone outside to purchase some commodity but

he did not return and later on, Sanjay Kumar searched for her husband but could not trace him. It is further stated that on 16.06.2019, the complainant came to know that in the area of Altos Nagar, Ludhiana, one dead body was lying and people have gathered. On seeing the dead body, she identified the same as of her husband and there were injuries on the forehead of the deceased.

Learned counsel for the petitioner further submits that at the first instance, when statement of complainant Kavita Kumari and Sanjay Kumar was recorded by the Investigating Officer, they did not raise suspicion on any person as this fact is reflected in the cross-examination of the IO/PW-3 SI Gulwinder Singh, wherein he has stated that the complainant did not raise any suspicion on anybody in her statement Ex. PA and Ex. P3D. It is further stated that the statement of Sanjay was recorded on 16.06.2019 as Ex. PW3/E and even at that time, he did not raise suspicion on anybody regarding the incident. It is further stated that on 18.06.2019, the complainant and Sanjay met Investigating Officer, where they recorded their supplementary statement raising a finger towards the petitioner and co-accused Guddu Yadav.

Reply, by way of the affidavit of SI/SHO, PS-PAU, Ludhiana, has been filed today in Court. In reply, it is stated that during investigation, the supplementary statement of the complainant was recorded on 18.06.2019, in which she has stated levelling allegations that her husband used to treat Sanjay as his brother, who used to reside with them in their house. She also stated that co-accused Guddu Yadav, who is the resident of complainant's parental village, used to object to living of Sanjay in the house of complainant as he was having a doubt that Sanjay had developed

illicit relation with complainant Kavita Kumari.

It is further stated in reply that during investigation, it has come that about a month prior to the incident, the petitioner and co-accused Guddu Yadav visited the house of the complainant and consumed liquor and objected to the stay of Sanjay in the house of complainant and deceased and even demanded that loan amount be returned, however, later on, the matter was compromised. It is also stated that in the statement of Sanjay, recorded under Section 161 Cr.P.C., it is stated that he had seen the complainant's husband Upinder Mahto with the present petitioner and Guddu Yadav purchasing liquor from a liquor vend and thereafter, they went and on the same night, Upinder Mahto was murdered. It is further stated that after the arrest of the petitioner and Guddu Yadav, the petitioner made confessional statement that they had consumed liquor and committed murder of Upinder Mahto as the petitioner caught hold of his arms and co-accused Guddu Yadav gave blows on the head of Upinder Mahto, due to which, he died.

A perusal of the aforesaid affidavit of the Investigating Officer though reveals that no specific motive is attributed to accused persons in this regard, however, learned counsel for the petitioner has submitted that now complainant Kavita Kumari and Sanjay have performed marriage and they have started living together in Bihar and none of them is coming forward to depose their evidence as the trial Court has granted number of dates but they are turning up.

On a Court query, learned State counsel, on instructions from ASI Amrik Singh, could not dispute that the trial Court issuing repeated notices/warrants to Kavita Kumari and Sanjay to appear as witness, however, they are not appearing as they are stated to be residing in Bihar.

I have heard learned counsel for the parties and have also gone through the affidavit of the Investigating Officer.

Without commenting upon the merits of the case, considering the fact that the petitioner is in judicial custody for the last more than 03 years and 02 months and also in view of the fact that complainant Kavita Kumar and Sanjay are not coming forward to record their statement, which is delaying the conclusion of trial, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaq Magistrate, concerned.

08.09.2022  
*Waseem Ansari*

(ARVIND SINGH SANGWAN)  
JUDGE

*Whether speaking/reasoned*

*Yes/No*

*Whether reportable*

*Yes/No*