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

CRM-M No.8632 of 2022 (O&M)

Date of decision: 04.08.2022

Jagjot Singh @ Bawa

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Anurag Chopra, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 2nd petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.331 dated 02.09.2020, for offence punishable under Sections 302, 364, 379-b(2), 201, 120-B, 506, 148, 149 of the Indian Penal Code, 1860 (in short 'IPC') registered at Police Station Jhabhal, District Tarn Taran.

The earlier one was dismissed as withdrawn on 12.01.2022 with liberty to the petitioner to file afresh petition after the statement of Mandeep Kaur, is recorded.

Counsel for the petitioner has submitted that as per the allegations in the FIR, registered at the instance of Kulbir Kaur, it is stated that on 01.09.2020, her son Gurbinder Singh had gone to the agricultural fields but did not come back and at about 07:00 PM, she came to know that Manjinder Singh armed with a datar, Harpal Singh

armed with a datar, Sahigpreet Singh armed with a datar, Hira Singh armed with a datar, Daljit Singh @ Doal with empty hands, Sarabjit Singh with empty hands, Gurbir Singh with empty hands along with Ram Singh, Jagga Singh, Amritpal Singh, Balwinder Kaur and Prabjot Kaur came in their car. Manjinder Singh, Harpal Singh, Sahigpreet Singh and Hira Singh had forcibly taken her son Gurbinder Singh on their motorcycle and gave beatings to him with their respective weapons. The complainant had seen the incident and shouted for help and on hearing the voices, the aforesaid persons took away the pistol and mobile phone of her son and when she came near Gurbinder Singh, he had already died. It is further stated in the FIR that the reason for enmity was that earlier also, the aforesaid persons entered into the house of her son and had shot at him and in this regard, an FIR No.305 dated 01.08.2020 under Sections 307, 506, 148, 149 IPC read with Section 25/54/59 of the Arms Act was got registered by her son Gurbinder Singh and due to this enmity, all these persons in conspiracy with each other have murdered him.

Counsel for the petitioner has then referred to FIR No.305 to submit that the petitioner was not named as an accused in the said FIR and 09 persons including the persons, who are named in the present FIR, are the accused in the said FIR. It is further submitted that the petitioner, who has nothing to do with the dispute between the complainant side and the accused side and he was not named in the FIR, however later on, on recording the supplementary statement of Mandeep Kaur that he is also the accused with whom Gurbinder Singh was having some enmity, he is nominated in this case. It is also

submitted that the petitioner was arrested on 24.09.2020 and the statement of Mandeep Kaur is already recorded.

Counsel for the petitioner has referred to the said statement of Mandeep Kaur to submit that though the petitioner was nominated as an accused on the statement of this witness PW-1 Mandeep Kaur, however, she has not supported the entire prosecution case as she has stated that the accused present through video conferencing in the Court are not the persons, who have forcibly taken Gurbinder Singh out of the house. She further stated that she do not identify the accused present through video conferencing as she has never seen them earlier and she has never suffered any statement Ex.PW1/A before the police. This witness was declared hostile and in the cross-examination by the Public Prosecutor, she even denied having made a statement before the police though she was confronted with the statement by referring to certain averments to which she denied. The Public Prosecutor has put up the entire prosecution version to this witness as per her statement with regard to role of all the accused persons, however, this witness denied all the allegations and stated that she has not made any such statement. The Public Prosecutor, thereafter, with permission of the trial Court also opened the sealed statement of Mandeep Kaur under Section 164 Cr.P.C. and the same was exhibited as Ex.PW-1/C and when she was confronted with the same, she also denied having made any such statement and stated that it was given by her under the pressure of the police authorities.

Counsel for the petitioner has, thus, argued that the only evidence against the petitioner was the supplementary statement of this

witness PW-1 Mandeep Kaur and once she has denied her statement made to the police under Section 161 Cr.P.C. Ex.PW-1/A as well as her subsequent statement under Section 164 Cr.P.C., recorded by the Magistrate Ex.PW1/C, there is no connecting evidence against the petitioner as he was not named in both the FIRs.

Counsel for the State has filed the reply on behalf of the Inspector/SHO, Police Station Jhabhal, District Tarn Taran, which is taken on record. In the reply, the Investigating Officer has verified the contents of the FIR as well as the investigation and the injuries sustained by the deceased Gurbinder Singh. It is stated in Para 7 of the reply that during the investigation, the aforesaid Mandeep Kaur suffered a statement before the Investigating Officer that the petitioner is also one of the accused, who along with other accused had committed the murder of Gurbinder Singh.

Counsel for the State on the basis of the Custody Certificate has, however, not disputed the fact that the petitioner is in judicial custody for the last 01 year and 10 months and also could not dispute that PW-1 Mandeep Kaur has not supported the prosecution version. However, it is submitted that the petitioner is involved in some other cases where he is on bail and in one case under the NDPS Act, his sentence stands suspended.

After hearing the counsel for the parties, without commenting anything on merits of the case, considering the fact that the petitioner is in judicial custody for the last 01 year and 10 months and 05 days; the material witness i.e. PW-1 Mandeep Kaur has not supported the prosecution version; the custodial interrogation of the

petitioner is not required and the conclusion of the trial will take some time, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

04.08.2022
yakub

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