

220 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-9206-2020 (O&M)
Date of Decision: 21.12.2022

(I)

MASOOM ALI

....PETITIONER

Versus

STATE OF PUNJAB

.....RESPONDENT

(II)

CRM-M-9297-2020(O&M)

BAGH HUSSAIN @ BAGHA

.....PETITIONER

Versus

STATE OF PUNJAB

..... RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Bipan Ghai, Advocate with
Mr. Nikhil Ghai, Advocate
for the petitioner in CRM-M-9206-2020.

Mr. Sunil Kumar Pandey, Advocate
for the petitioner in CRM-M-9297-2020.

Mr. Jashandeep Singh, Assistant A.G. Punjab.

Mr. Manuj Nagrath, Advocate
for the complainant.

JASGURPREET SINGH PURI, J. (ORAL)

Both the cases are taken together with the consent of learned
counsel for the parties for final disposal since in both the cases, prayer is made
for grant of regular bail arising from the same FIR No.43 dated 20.05.2018
under Sections 364, 302, 201, 365, 120-B of IPC and Section 25, 27, 54, 59 of

Arms Act, 1959 registered at Police Station Tarshikka, District Amritsar (Rural).

Learned Senior counsel for the petitioner(s) has submitted that both the petitioners are in custody from 08.12.2018 which is more than 4 years. He has submitted that out of the total 56 witnesses, 8 have already been examined which are the material witnesses which includes the complainant and the person before whom extra judicial confession was made and also the person who had stated that he had last seen the petitioners with the deceased. They further submitted that it is a case where although name of both the petitioners are mentioned in the FIR but it was based upon the last seen theories and suspicion and the petitioners have already faced incarceration for more than 4 years and therefore, the petitioners may be considered for grant of regular bail. They further submitted that the other co-accused, namely, Saiphia, Liakat Ali @ Toti, Yakub Khan @ Yuba and Jahura vide Annexures P-2 to P-6, who are although not named in the FIR have been extended the benefit of regular bail by the Co-ordinate Bench of this Court . They further submitted that since the entire prosecution story was based on suspicion on the ground that the deceased was married with the daughter-in-law of Gama, but has died during the pendency of the trial and in order to avenge that he has caused the murder of the deceased along with the present petitioners. They further submitted that the entire case is based upon suspicion and be that as it may all the material witnesses have been examined and they have faced incarceration for more than 4 years and 8 witnesses including all the material witnesses have been examined. They may be considered for grant of regular bail.

Learned State counsel has however opposed the grant of bail to the petitioners on the ground that the matter was serious in nature because the dead body of the deceased could not be found till date and even if the entire case was based upon suspicion, it cannot be said that the petitioners are entitled for grant of bail.

On the other hand, learned counsel for the complainant submitted that it was a case of honour killing whereby the deceased had married the daughter-in-law of the co-accused Gama and all the accused had collectively caused the death of the deceased by throwing him in the canal. He submitted that the other co-accused who have been granted bail by the Co-ordinate Bench of this Court were not named in the FIR and therefore the present petitioners are not at parity with the other co-accused and therefore, opposed the grant of regular bail to the petitioners. He further submitted that the petitioners are involved in 2 more cases out of which one pertains to Prisons Act and the other pertains to Section 379 of IPC.

I have heard the learned counsel for the parties.

Both the petitioners have faced incarceration for more than 4 years and as per the learned counsel for the parties all the material witnesses have been examined including the complainant and the person to whom extra judicial confession was made. As per the allegations, the name of the petitioners figures in the FIR but it appears that the case pertains to suspicion of the complainant. This Court does not wish to go into the merits of the case but for the purpose of considering only the grant of regular bail, the other factors are required to be considered. The petitioners are stated to be not habitual offenders, except 2 cases against the petitioner, Masoom Ali wherein

he is under trial in one case in Prisons Act and one case under Section 379 IPC. The fact that the petitioner Masoom Ali is under trial in 2 more cases cannot per se become a ground of denial of the grant of regular bail.

However, one significant factor which is required to be seen in the present case for considering the grant of regular bail is the long custody of the petitioners which is more than 4 years coupled with the fact that all the material witnesses have been examined and also the fact that it is not the case of the State counsel that in case the petitioners are released on bail then they may abscond from justice or may influence the witnesses especially when materials witnesses have been examined. Therefore, this Court is of the view that in view of the aforesaid facts and circumstances and particularly the long custody of both the petitioners, they deserve the concession of grant of bail.

Consequently, both the petitions are allowed. The petitioners shall be released on regular bail, subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

However, anything observed herein above shall not be treated as an expression of opinion on merits of the case & is only meant for the purpose of decision of present petition.

21.12.2022
neelam

(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No