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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision:03.02.2022

1. CRM-M-13242-2020 (O&M)

Darshan Singh	.. Petitioner
Vs.	
State of Punjab	..Respondent

AND

2. CRM-M-29921-2021 (O&M)

Jaideep Singh	.. Petitioner
Vs.	
State of Punjab	..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. R.S. Rai, Sr. Advocate with
Mr. Deepak Jain, Advocate for the petitioner
in CRM-M-13242-2020.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Ajaivir Singh, Advocate
for the petitioner in CRM-M-29921-2021.

Mr. Ramdeep Partap Singh, DAG, Punjab.

Mr. Preetinder Singh Ahluwalia, Advocate with
Mr. Jagat Vir Dhindsa, Advocate
for the complainant in CRM-M-13242-2020.

Mr. Raman Goklaney, Advocate
for the complainant in CRM-M-29921-2021.

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Manoj Bajaj, J. (Oral)

CRM-3422-2022

Application is allowed, subject to all just exceptions. Annexure

P-14 is taken on record.

Main case

Petitioners have filed these separate petitions under Section 439 Cr.P.C for grant of regular bail, pending trial in case FIR No.0097 dated 19.10.2017, registered under Sections 302, 382, 201, 148, 149 and 120-B IPC, 1860 and Sections 25, 27, 54 and 59 Arms Act, at Police Station Sadar Abohar, District Fazilka, Punjab. The petitioners are in custody since their arrest on 04.11.2017 and 18.05.2018 respectively.

The above said FIR was registered on the statement of Baljeet Singh, wherein it was alleged that he used to do the work of agriculture and his brother Balkaran Singh resided at Dhali Thakar Singh, Dakhil, Village Balluana. On 18.10.2017, his brother Balkaran Singh had returned from Delhi and came to Dhani in the afternoon. The complainant went to meet him and stayed with him in the night. On the next day, at about 8.30 am, Balkarn Singh along with Harpreet Singh had gone for a walk and the complainant also went out for a walk behind them. The complainant was at a distance of about 3-4 Acres from them when Balkaran Singh and Harpreet Singh reached at turn near Tahil in his fields, then from the opposite side, one, white colored Swift Car came from which five persons came out along with weapons. Samarbir Singh @ Sammy armed with .12 bore Gun, Kulbir Singh, Gurnek Singh @ Rimpay, Gurteshwar Singh and a youth wearing Turban was armed with .315 bore gun, then Samarbir Singh extorted that lesson be taught to Balkaran Singh, then Samarbir Singh fired a shot with his .12 bore Gun, which hit in the chest of Balkaran Singh and the person wearing turban fired two shots with .315 bore gun, which hit on the head of Balkaran Singh and the other persons also fired shots with their respective weapons. Harpreet Singh ran towards another side and they also fired shots

towards him as well. Balkaran Singh fell down on the ground and 4-5 persons who were also with them came out of one another car and they also fired shots while raising lalkaras, then out of fear complainant ran towards backside. After a while the accused persons also took away .32 bore pistol of Balkaran Singh and fled away along with their respective weapons from the spot. When complainant and Harpreet Singh reached near Balkaran Singh, he was found dead. It was alleged that the motive behind the occurrence was the land dispute between Balkaran Singh and Samarbir Singh @ Sammy and his brother Kulbir Singh which was decided by Court on 25.09.2017 in favour of Balkaran Singh.

Learned Senior counsel for the petitioners have argued that from the very beginning, the complainant, namely, Baljeet Singh has been taking conflicting stand in respect of the occurrence, as three of the assailants, namely, Samarbir Singh @ Sammy, Gurnek Singh @ Rimpny and Gurteshwar Singh who were stated to be present at the spot of occurrence were actually not found present at the place of occurrence. It is further submitted that co-accused, namely, Gurnek Singh @ Rimpny and Gurteshwar Singh were even not in India, when the occurrence took place and similarly, the other co-accused Samarbir Singh @ Sammy who allegedly fired gun shot on the chest of the victim was found present at Chandigarh, when the occurrence took place. Learned counsel have argued that the said co-accused Samarbir Singh @ Sammy has been implicated on the basis of criminal conspiracy and was released on regular bail by this Court vide order dated 03.10.2019 (Annexure P-9). It is further pointed out that the other two co-accused, namely, Gurnek Singh @ Rimpny and Gurteshwar Singh were extended the concession of pre arrest bail by this Court vide

order dated 29.08.2019 (Annexure P-7).

Mr. Rai, learned senior counsel appearing on behalf of Darshan Singh has argued that the unknown person wearing turban as mentioned in FIR, was later on described by Harpreet Singh (PW-1) in his supplementary statement dated 04.11.2017 as Darshan Singh, who was armed with a firearm weapon and fired at the victim, but no recovery of weapon has been effected from him. Learned counsel has further drawn the attention of the Court to the testimony of Harpreet Singh (PW-1) dated 12.12.2019 (Annexure P-13), wherein the witness has admitted that he was in police custody and was let off about 2-3 days prior to 04.11.2017. According to the learned senior counsel, the stand of the eye-witness Harpreet Singh alone, who himself was a suspect, would not convincingly connect the petitioner with the alleged crime. He prays for bail.

Mr. Kanwaljit Singh, learned senior counsel appearing on behalf of co-accused Jaideep Singh has also argued that the petitioner was not named in the FIR and was implicated on the basis of supplementary statement of Harpreet Singh recorded under Section 161 Cr.P.C. on 04.11.2017 (Annexure P-3 in CRM-M-29921 of 2021). He submits that in the said statement, the names of Gurnek Singh @ Rimpay and Gurteshwar Singh were not mentioned by the said witness, and later on they were substituted by implicating Jaideep Singh (petitioner) and Manpreet Singh @ Mappy (co-accused). According to him, accused Jaideep Singh is also in custody since 18.05.2018, and against him no specific overt act has been attributed, so he also deserves the concession of regular bail.

The prayer is opposed by learned counsel for the complainant, who have argued that the version of the complainant was not correctly

recorded and it was complainant, who brought a petition bearing CRM-M-2445-2018 before this Court, raising high-handedness of police and this Court vide order dated 22.01.2018 constituted a Special Investigating Team (SIT) to complete the investigation. Mr. Preetinder Singh Ahluwalia, Advocate submits that the said investigation report dated 21.11.2018 is appended as Annexure R-1 with the reply filed by State by way of an affidavit of Avtar Singh, PPS, Deputy Superintendent of Police (Rural), Abohar, District Fazilka. He submits that Samarbir Singh @ Sammy was in touch with other accused persons and his call details record establishes his participation in the crime.

During the course of hearing, it is not disputed by learned counsel for the complainant that as per the report, on the date of occurrence, the co-accused Gurnek Singh @ Rimpay and Gurteshwar Singh were not in India and accused Samarbir Singh @ Sammy has been implicated on the basis of criminal conspiracy. However, according to Mr. Ahluwalia, learned counsel, accused Darshan Singh has a previous criminal record and as per prosecution, it was him who fired on the head of the victim resulting in his death. He prays that the petitioners do not deserve the concession of regular bail.

Learned State counsel assisted by ASI Dayal has also opposed the prayer, however, it is not disputed that in all, there are 55 prosecution witnesses and out of it, 6 witnesses have been examined including the eye-witnesses, namely, Baljeet Singh and Harpreet Singh, whereas 5 have been given up. He further states that co-accused Samarbir Singh @ Sammy and Manpreet Singh @ Mappy have died.

At this stage, learned senior counsel for petitioners have argued

that no recovery of weapon was effected from the petitioners, and the stand of the complainant that his version was not correctly recorded by police, cannot be attached any significance, because while appearing before the trial Court as PW-3, no such grievance was deposed by him. Mr. Rai, learned senior counsel has highlighted that though as per the final report, co-accused Samarbir Singh @ Sammy was not found at the place of occurrence, but the complainant in his deposition before the trial Court has again maintained his stand that he was present at the spot and fired at the victim. According to him, the turbaned man, who was later on described as Darshan Singh, was previously known to the complainant and in this regard, he has drawn the attention of the Court to the cross-examination of complainant Baljeet Singh, wherein he admitted that in photographs Ex. D-6 relating to the marriage function held prior to the occurrence, he is seen along with Darshan Singh (petitioner). Learned Senior counsel has argued that as the accused-petitioner was previously known to the complainant, therefore, it does not appeal to prudence as to why name of Darshan Singh was not mentioned by the complainant-Baljeet Singh. According to learned counsel, the case of the prosecution is surrounded by serious doubts, therefore, they have reiterated their prayer for regular bail.

After hearing the learned counsel for the parties and considering the above background, this Court is of the opinion that the material eye-witnesses have already been examined by the prosecution, but still 44 prosecution witnesses remain to be examined, so it is evident that the conclusion of trial is likely to consume long time. Further while considering the prayers for bail, it would not be appropriate for this Court to evaluate the testimonies of the eye witnesses minutely to return a finding

upon their trustworthiness, as it is for the trial Court to evaluate the said evidence in the light of other evidence which is yet to be adduced by the prosecution. Admittedly, the petitioners are presently confined in judicial custody since their arrest and their co-accused have already been released on bail. Thus, the further detention of the petitioners behind the bars may not serve any useful purpose, as the remaining witnesses are official witnesses and at present, there does not seem to be any possibility of their being won over.

Resultantly, without meaning any expression of opinion on the merits of the case, the petitions are allowed and it is ordered that the petitioners be released on regular bail subject to their furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court/CJM/Duty Magistrate, concerned.

The petitions are allowed.

03.02.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No