

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

(I) CRM-M-23438-2020 (O&M)

Lalit Kumar @ Sahil ... Petitioner

Versus

State of Punjab ... Respondent

(II) CRM-M-44648-2021 (O&M)

Vikas Kumar @ Sonu ... Petitioner

Versus

State of Punjab ... Respondent

Date of Decision:-13.9.2022

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Harshit Jain Advocate for
Mr. Gurbir Singh Sidhu, Advocate,
for the petitioner in CRM-M-23438-2020.

Mr. Mrigank Sharma, Advocate,
for the petitioner in CRM-M-44648-2021.

Ms. Swati Batra, DAG, Punjab,
assisted by SI Narinder Kumar.

GURVINDER SINGH GILL, J. (Oral)

1. This order shall dispose of the above mentioned two petitions filed on behalf of petitioners Lalit Kumar @ Sahil and Vikas Kumar @ Sonu seeking grant

of regular bail in respect of a case registered vide FIR No.0075, dated 21.3.2020, Police Station Dera Bassi, S.A.S. Nagar (Mohali), under Sections 302 and 34 of Indian Penal Code.

2. The facts, in nutshell, are that on the night intervening 16.3.2020/17.3.2020, a dead-body was found in the cremation ground, Dera Bassi. The said incident was witnessed by the complainant Karamjit Singh, who is having a puncture shop adjoining the gate of cremation ground as he had noticed that Vikas Kumar @ Sonu and Lalit @ Sahil were arguing with an unknown 'Baba', who had been residing in the cremation ground since the last about 5 years. He saw Vikas Kumar @ Sonu inflicting a brick blow on the head of the said 'Baba' while the petitioner Lalit @ Sahil inflicted a blow to the said 'Baba' with a handle of a 'kahi'. The complainant being scared ran away from the spot. The complainant thereafter went to his inlaws' house and returned back on 21.3.2020 and upon returning back, he came to know that the said 'Baba' had died.

However, when the aforesaid complainant was examined during the proceedings of trial, he turned hostile. During the pendency of the bail applications before this Court, the petitioner Lalit @ Sahil (in CRM-M-23438-2020) was ordered to be released on interim bail vide order dated 19.7.2021. The petitioner Vikas Kumar @ Sonu (in CRM-M-44648-2021) was ordered to be released on interim bail vide order dated 16.12.2021.

3. Learned counsel for the petitioners have submitted that since there is no credible evidence against the petitioners as the prime eye-witness has not supported the case of the petitioner, the interim bail granted to the petitioners deserves to be confirmed particularly when there is nothing on record to

suggest that the petitioners, ever since grant of interim bail, have misused the same.

4. On the other hand, learned State counsel has submitted that it is apparently a case where the petitioners have won over the witness either by way of threatening or by holding out some financial allurements and that, as such, having regard to the heinous nature of crime, the petitions deserve to be dismissed. Learned State counsel has, however, informed that the petitioners otherwise are not involved in any other case. It has been informed that as on date 4 PWs out of the cited 15 PWs have been examined and that the petitioners have otherwise remained behind bars earlier for about 1 year and 4 months.
5. This Court has considered the rival submissions.
6. Having regard to the facts and circumstances of the case particularly the fact that the petitioners have already remained behind bars for about 1 year and 4 months and otherwise are not involved in any other case and that the key witness has already resiled, both the petitions are allowed and the interim directions as issued earlier vide order dated 19.7.2021 (in CRM-M-23438-2020) and vide order dated 16.12.2021 (in CRM-M-44648-2021) are hereby made absolute.
7. It shall, however, be open to the Trial Court to impose any other condition as deemed appropriate for ensuring regular appearance of the petitioners before the Trial Court. It shall even be open to the Trial Court to direct the petitioners to furnish fresh bail bonds/surety bonds, if deemed appropriate.
8. Before parting with the order, this Court deems proper to refer to order dated 20.4.2021 passed by this Court in passed in CRM-M-23438-2020, which reads as follows:

“The matter has been taken up through video conferencing. Learned State counsel submits that the investigating officer is being examined before the Trial Court and on completion of his examination prays for time to place on record his statement.

Adjourned to 19.07.2021.

Before the adjourned date, in the light of the complainant having turned hostile, the State shall inform this Court with regard to the action, in accordance with law, that the State intends to take against the complainant for having lodged a false FIR against the petitioner and one Vikas Kumar

9. Thereafter, on 19.7.2021, this Court upon noticing that the aforesaid directions dated 20.4.2021 have not been complied with, had again directed the State to do the needful.
10. Learned State counsel has informed that no action has been taken by the police mainly on account of the fact that the complainant has resiled before the Court from his previous stand. Learned State counsel has referred to para No.8 of reply filed on behalf of the State, which reads as under:

“ That it is respectfully submitted that the complainant/witness has turned hostile which may cause harm/harassment to the petitioner and his uncle. However, it is most humbly submitted that the witness has turned hostile after the challan has been presented in the Ld. Trial Court, at the stage of evidence.

Therefore, once the challan has been presented the cognizance on the hostile witness can only be taken by the Ld. Trial Court. The police had the power to initiate proceedings under Section 182 Cr.P.C. if the challan would have not been presented. On the other hand in the present case the accused are acquitted by the Ld. Trial Court because of the complainant turning hostile,

then at that stage proceedings under Section 340 Cr.P.C. can be initiated/referred by the police. Therefore, at the present stage it is only the Ld. Trial Court which can take the cognizance of complainant turning hostile and take appropriate action in accordance with law.”

11. In view of the aforestated position, this Court deems appropriate that the Trial Court be directed to consider and take appropriate action as may be warranted after examining the statement of the complainant as made before the police and as made in the Court during proceedings of trial.
12. A copy of this order be conveyed to the Trial Court concerned for necessary information and compliance.
13. A copy of this order be placed on the file of connected case.

13.9.2022

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No