

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

CRM-M-46011-2021 (O&M)

Date of decision: 06.12.2022

Gurpyar Singh @ Gogi @ Neha Mahant

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Bijender Dhankar, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

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. 167 dated 20.07.2020, registered under Sections 302, 201, 120-B and 34 of the IPC at Police Station Kalanwali, District Sirsa.

The first petition, bearing CRM-M-44104-2020, was dismissed as withdrawn on 13.07.2021.

Brief facts of the case are that the present FIR was registered on the statement of complainant Subhash Singh, wherein it is stated that Kala Singh and Hira Singh @ Deepu are the real brothers and are living in the same house and were known to complainant. It is further stated that an unknown person, who was wearing the ladies clothes, was also living with Hira Singh @ Deepu. On 19.07.2020, when the complainant was present at his house, he came to know that Hira Singh @ Deepu and Kala Singh have run away from their house by putting a lock and keeping the dead body of a person in a muddy pit, in the temporary kitchen of the house so as to destroy

the evidence of murder.

Learned counsel for the petitioner submits that thereafter, the investigation was conducted and four persons, including petitioner, were arrested. During investigation, the disclosure statement of the petitioner was recorded, however, nothing has come on record regarding his involvement.

Learned counsel has referred to the confessional statement of the petitioner, wherein it is stated that the petitioner was a devotee of one Pali Mahant and used to dance for collecting money and has kept his name as 'Neha Mahant'. It is further stated that Hira Singh @ Deepu also used to come to Pali Mahant to play the drum and the petitioner asked Hira Singh @ Deepu that he wants to change his gender. In the meantime, petitioner, Kewal Mahant and another accused Thandu @ Golu Mahant made a plan for earning more money and in that process, they hired the services of Vicky (deceased) and decided that his gender should also be changed and for that purpose, some amount was given to co-accused Hira Singh and Gagandeep Singh.

Learned counsel for the petitioner further submits that now the statement of PW-1/complainant Subhash has been recorded, in which he has stated that he does not know anything and his signatures were taken on a blank paper by the police. This witness was declared hostile and in the cross-examination, he admitted his signatures on the statement Ex. P-1, however, he denied the contents of the statement, though he was confronted with the same by the public prosecutor.

Learned counsel further submits that even the statement of the father of deceased, namely Hans Raj, has been recorded as PW-2, wherein he has identified two persons i.e. Hira Singh and Gagandeep as accused,

who committed the murder of his son Vicky @ Nander. Petitioner and co-accused Thandu @ Golu were shown to this witness through video conferencing, however, this witness stated that they are not the persons, who are involved in the murder of his son. This witness was also declared hostile and was cross-examined by the public prosecutor but did not support the case qua petitioner and co-accused Thandu @ Golu.

Learned counsel for the petitioner further submits that even the statement of the mother of deceased, namely Charanjeet Kaur, has been recorded as PW-3, in which she has identified only two persons as accused, i.e. Hira Singh and Gagandeep, and has not identified the petitioner as well as co-accused Thandu @ Golu. This witness was also declared hostile as she did not support her statement made before the police qua these two persons.

It is further submitted that all the material witnesses have already been examined and the petitioner is in judicial custody for the last 02 years, 04 months and 11 days and he is not involved in any other case, therefore, there is no possibility for the petitioner to tamper with any prosecution evidence.

Learned State counsel has filed the custody certificate and submitted that out of total 20 prosecution witnesses, 07 witnesses have been examined so far. He has not disputed that in the statements of PW-1, PW-2 and PW-3, nothing has come on record against the petitioner as they have not supported the prosecution's case qua petitioner.

Learned State counsel, on the basis of the affidavit of DSP, Dabwali, has submitted that during investigation, it has come that the petitioner, along with Kewal Mahant and Thandu @ Golu, had hired the

services of Hira Singh @ Deepu and Gagandeep, has committed the murder of Vicky. It is further submitted that as per further investigation done by ASP, Kalanwali, co-accused Kala Singh was not found involved in the offence and Kewal Mahant was found involved in the commission of murder of Vicky, however, while submitting *Challan*, even Kewal Mahant was found innocent.

Learned State counsel, on the basis of the custody certificate filed today in Court, has not disputed the custody period of the petitioner and that he is not involved in any other case and all the material witnesses have already been examined.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the aforesaid facts and circumstances, 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.

06.12.2022

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No