

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

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CRM-M-45856-2021

Date of decision: 06.05.2022

GURVINDER KAUR ALIAS BABBU

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present : Mr. K.S.Sidhu, Senior Advocate assisted by
Mr. Dushyant Sarvesh, Advocate
for the petitioner.

Mr. Sandeep Singh Deol, DAG, Punjab

SURESHWAR THAKUR, J. (ORAL)

1. The instant petition has been filed under Section 439 of Cr.P.C., wherein the bail petitioner claims relief for her being admitted to regular bail.
2. In FIR No. 19 dated 22.04.2021 registered at Police Station Sudhar, Ludhiana, offences constituted under Sections 302, 323, 506, 148 and 149 of the IPC, are embodied.
3. A perusal of FIR (Supra), reveals that the accused are alleged to form an unlawful assembly, and, to commit the murder of deceased Harpreet Singh.
4. The relevant penal occurrence occurred on a street above which the house of the present bail petitioner is located.
5. All accused concerned are alleged to throw/flip bricks on

various portions of the body of the deceased, hence causing injuries on his person but the fatal injury with user of a brick flung, at the victim became entailed upon the head of the deceased.

6. A reading of the post-mortem report placed before this Court, reveals that both on the scalp, and, on the skull of the deceased, a depressed fracture of *parietal bone* becoming entailed.

7. The reason for the demise of Harpreet Singh, is opined in the post-mortem report, to be a sequel of *Cardio Respiratory Arrest*, arising from the above head injury. Therefore, the attribution of a penal role to the accused concerned in the FIR (Supra), qua theirs flinging bricks, at the deceased, does at this stage, *prima facie*, become supported by the above post-mortem report.

8. Though, the learned Counsel appearing for the petitioner has argued with much vehmence, before this Court, that though the penal occurrence occurred at 18.04.2021, but it became reported belatedly therefrom, rather on 22.04.2021. Therefore, he contends that the above delay in the reporting of the incident to the police authorities, stains the inculpatory narrations in the FIR, rather with vices of concoctions and pre-meditations. However, the afore submission would be merit-worthy only, if there no credible explanation in respect of the afore delay, becoming meted by the prosecution, for hence adjudging which the above delay becomes fatal or not, to the prosecution case.

9. A reference to the reply on affidavit placed on record by learned State Counsel, reveals that the above delay was occasioned by lack of fitness of the deceased Harpreet Singh to make a statement with

respect to the manner of taking place of the occurrence, at the crime site, and, also there is a further reason assigned therein, that even his spouse one Paramjit Kaur, was not ready to make a statement with respect to the manner of happening of the occurrence at the relevant site, as she had insisted that she would make a statement only in the presence of her husband. Since, the afore explanation qua the relevant delay, is well founded, thereupon, any consequence of the above delay is in-consequential, and, nor account of any delay the counsel for the petitioner can rest any submission, that merely thereupons, the incriminatory narrations carried in the FIR (Supra), rather are stained with vices of pre-meditations, and, concoctions.

10. The further result of aforesaid inference, is that, the attribution to the accused therein, of an incriminatory role in the penal occurrence, rather prima facie, at this stage, is worthy of credence.

11. Nonetheless, only with respect to the purported incriminatory role of the present bail petitioner, this Court, has proceeded to delve into the relevant records.

12. Before proceeding to do so, it is relevant to mention, that the demise of deceased, one Harpreet Singh, was a sequel of his suffering a fatal head injury, which however is not attributable to the present bail petitioner but is attributable to other co-accused concerned.

13. The attribution of an incriminatory role to the present bail petitioner, is qua hers flinging a brick at the deceased, rather from the roof of the house of her husband one Harminder Singh.

14. This Court has perused the site plan placed before this

Court by the learned State Counsel.

15. On perusal thereof, it is unfolded that the place of occurrence, is at point 'A', whereas, the house of the husband of the present bail petitioner, is on the opposite side to point 'A'.

16. The present bail petitioner is attributed by the prosecution, to, from the roof of the above house fling a brick at the feet of deceased Harpreet Singh. Consequently, she was not available at the crime site, reflected in the site plan as Point A. Point A is occurring at the street concerned. The drawing of the site plan is on 22.04.2022, whereas, the relevant occurrence, as, did happen, rather occurred on 18.04.2022.

17. Even, if the site plan was prepared on 22.04.2022, yet the Investigating Officer concerned, became enjoined to after visiting the roof of the house of the husband of the petitioner, as, existing above point 'A', rather make analyses, and, assessments whether there were any loose bricks existing thereon, and, or make analyses of the walls existing therein, and discern whether there were any loosened bricks or displaced bricks there, and, which obviously were available for user by her, rather to commit the purported penal act, of hers flinging bricks from the roof onto the street below.

18. However, there are no echoings in the site plan nor is there any evidence adduced by the prosecution rather making articulations, that the Investigating Officer concerned visited the house of the husband of the present bail petitioner, and, his thereafter making the above analyses.

19. The result of the above failure of the Investigating Officer

concerned, is that the attribution of the above incriminatory role to the present bail petitioner, qua hers from roof of the house of husband flinging a brick at the deceased Harpreet Singh, and which, allegedly struck his foot, is prima facie, at this stage, not amenable for being not meted any credence.

20. Therefore, only with respect to the incriminatory role of the present bail petitioner, this court is constrained to not mete any credence to the evidence collected against her.

21. Moreover, since at this stage, no evidence has been adduced by the prosecution, suggestive that in the event of the bail petitioner being admitted to regular bail, there is every likelihood of hers fleeing from justice or tampering with prosecution evidence, or influencing prosecution witnesses, besides when the present bail petitioner stepped into the judicial custody, on 23.04.2021. As such, her judicial incarceration is not required to be any further prolonged, as thereupon, her personal liberty would become unnecessarily fettered, and, curtailed.

22. Therefore, the instant petition is allowed, and, the petitioner bail applicant is ordered to be released from judicial custody. However, the granting of bail to the bail applicant-petitioner, is subject to her furnishing personal, and, surety bonds in the sum of Rs.1,00,000/- each, before the learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned, and, also subject to hers not tampering with prosecution evidence, and, also hers not influencing prosecution witnesses, and, besides hers appearing before the trial

Court concerned, as and when directed to make her personal appearance unless validly exempted.

23. It is clarified that the above made observations are strictly made only for disposal of the present bail petition, and, shall not influence in any manner, the learned trial Judge concerned as and when he/she deals with the trial of the FIR (Supra).

06.05.2022
kavneet singh

(SURESHWAR THAKUR)
JUDGE

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