

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-47692-2021 (O & M)****Date of decision: 13.09.2022**

Gurbhej Singh @ Bheja

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Gursharan Kaur Mann, Sr. Advocate,
with Ms. Simrat Kaur, Advocate, for the petitioner.

Mr. Ravinder Singh, AAG, Punjab.

Mr. Ritesh Pandey, Advocate, for the complainant.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of the regular bail to the petitioner in case FIR No.44 dated 24.02.2021 under Sections 302, 201, 379, 34 IPC registered at Police Station Jandiala Guru, District Amritsar.

2. The brief facts of the case are that on 09.11.2020, ASI Tarsem Singh No.706/ASR-R, Incharge of the police Post Town Jandiala, Amritsar (Rural) was present at Chowk Ghah Mandi, Jandiala with respect to patrolling and the complainant Vattandeep Singh son of Dilbagh Singh resident of village Usman, police Station Sarhali, District Tarn Taran, approached him and got recorded a statement before him that his brother Sharandeep Singh had gone from the house with his friends on 28.10.2020 at about 7.00 p.m. by saying that he was going to Chandigarh with his friends

and while going out, he had taken his licensed pistol 32' bore and some

clothes with him. He further stated that on 01.11.2020 at about 8.00 p.m., Sharandeep Singh had a talk with his mother but thereafter his phone was switched off and he (complainant) lodged a missing report about the disappearance of his brother Sharandeep Singh in the Police post Naushera Pannuan on 06.11.2020. He further stated that during the search of his brother, he found a decomposed dead body having a foul smell near the canal bridge of village Dharar about 200 meters away from the drain of village Sheikfateh and from the clothes and Kara worn by the deceased on his left hand, he identified that the dead body was of his brother Sharandeep Singh. After recording the aforesaid statement, ASI Tarsem Singh proceeded to the aforesaid place and took the dead body in police possession and conducted proceedings under Section 174 Cr.P.C. vide G.D.R. No.39 dated 09.11.2020.

As per the post-mortem report, there were as many as five injuries on the person of the deceased and the cause of death was to be declared after the receipt of reports from the Chemical Examiner and the Department of Pathology.

On 18.01.2021, the complainant-Vattandeep Singh move an application before the Senior Superintendent of Police alleging that his brother had been murdered by Gurjit Singh son of Tarsem Singh alongwith unidentified persons in order to rob him and after committing the murder, they had dumped his body near the canal bridge and threw a syringe, needle and bottle of some medicine near his dead body to show that he has died due to overdose of drugs. He further requested that a fair and impartial investigation of the case be conducted after arresting Gurjit Singh @ Valli.

Based on the aforementioned application, a detailed enquiry

was obtained from the doctor who had conducted the post-mortem examination of the deceased and in his written opinion, the doctor mentioned that keeping in view the injuries No.1 and 2 over the neck and the damage to the underlying structures of the neck, these findings were suggestive of anti-mortem strangulation. Therefore, a recommendation was made for registration of the FIR under Section 302, 201, 379/34 IPC, which was registered on 24.02.2021.

During the course of investigation, the statement of one Baldev Singh son of Dalip Singh was recorded on 27.04.2021, who stated that he had seen an Innova car having four young persons sitting in the same and roaming near the drain. They were looking perplexed and under the influence of drugs. He stated that since they were driving at a slow speed, he had seen something wrapped in the cloth on the backseat of the Innova car.

On 28.04.2021, the statement of Satinderjit Singh, Ex-sarpanch of village Bandala, was recorded, who made a statement that Gurjit Singh @ Valli, alongwith three friends had visited his house on 27.04.2021 and introduced them as Bheja @ Gurbhej Singh (petitioner herein), Gopi @ Gurpreet Singh, Shera @ Shamsher Singh. They had made individual confessions before him one by one that on 01.11.2020, they had murdered Sharandeep Singh by giving him an injection of intoxicating tablets and by strangulating him because they had a quarrel with him regarding drugs. They confessed that Gurbhej Singh @ Bheja had strangulated Sharandeep Singh while Gopi @ Gurpreet Singh had caught hold of his arms while Gurjit Singh gave an injection of intoxicating tablets. At that time, Shera @ Shamsher Singh was driving the car. They all requested him to produce them before the police as an FIR stood registered against them.

Based on the aforementioned statement, the petitioner and his co-accused Gurpreet Singh @ Gopi and Shamsher Singh @ Shera were nominated as accused. Gurjit Singh @ Valli was arrested on 28.04.2021 and on interrogation, confessed about committing the offence. He was identified by Baldev Singh as being one of the occupants of Innova Car.

On 29.04.2021, the petitioner-Gurbhej Singh @ Bheja and his co-accused Gurpreet Singh were arrested and from Gurpreet Singh @ Gopi, a mobile phone make I-phone belonging to the deceased-Sharandeep Singh was recovered. The said phone was identified by the complainant-Vattandeep Singh. They were also identified by Baldev Singh as being the other two occupants of the Innova Car. On 25.06.2021, the co-accused Shamsher Singh @ Shera was arrested and he made a disclosure statement that the Innova Car used by him and the other accused during the occurrence was given to him by an unknown person as guarantee in lieu of delivery of intoxicants and the same had been stolen by someone. The pistol of the deceased was also kept on the dashboard of the aforementioned Innova Car.

3. The learned Senior counsel for the petitioner contends that the petitioner is not named in the FIR. In fact, there are two substantial pieces of evidence against the accused. Firstly, there is the “last seen” evidence of Baldev Singh as mentioned above and secondly, “an extra judicial confession” in the presence of Satinderjit Singh as mentioned above. She contends that Baldev Singh has been examined as PW-5 and has not supported the case of the prosecution. So far as the “extra judicial confession” before Satinderjit Singh (PW-3) is concerned, she submits that by it’s inherent nature the evidence of an extra judicial confession is a weak kind of evidence. More so, when it is made to a person who has no proximity with the accused. In the present case, the purported confession

has been made by the accused in the presence of Satinderjit Singh, who is otherwise a relative of the complainant-party. She, thus, contends that no reliance can be placed on the said statement. Even otherwise, it would be a matter of adjudication during trial as to the evidentiary value of such a statement and whether it was sufficient to affix guilt on the accused. She places reliance on the judgments passed by the Hon'ble Supreme Court in the cases of "*Chandrapal (Earlier M.P.) versus State of Chhattisgarh, (Criminal Appeal No.378 of 2015 decided on 27.05.2022*", "*State of Karnataka versus P.Ravikumar @ Ravi Etc., 2018(5) RCR (Criminal) 526*" and a judgment of this Court passed in the case of "*Mandeep Singh and another versus State of Punjab, (CRA-D-933-DB-2009 decided on 31.08.2022*". She further submits that no recovery whatsoever has been effected from the petitioner. Even otherwise, the cause of death has not been conclusively determined till date because as per the post-mortem report, the cause of death was to be given after the report of the Chemical Examiner and Pathologist. Pursuant thereto, the opinion of the doctor was taken, who stated that the cause of death was suggestive of anti-mortem strangulation. However, the final cause of death would be declared after the receipt of the report of the Chemical Examiner and Pathologist. She lastly contends that the petitioner is in custody since 29.04.2021. Only 05 of the 23 prosecution witnesses have been examined so far. Out of the 05 examined prosecution witnesses, two material witnesses, namely, Satinderjit Singh (PW-3) and Baldev Singh (PW-5), witness of the "last seen", have not supported the case of the prosecution. In such a situation, she prays that the further incarceration of the petitioner is not required and he be granted bail.

4. The learned counsel for the State, on the other hand, contends

that the petitioner alongwith his co-accused have been named by Satinderjit

Singh (PW-3), before whom they had made extra judicial confession as also Baldev Singh (PW-5), who is said to have seen all the accused alongwith the deceased in the Innova Car. He further contends that the petitioner is involved in one other case under the NDPS Act, though, he has been granted bail in the said case. In fact, the seriousness of the allegations against the petitioner do not entitle him to the grant of bail, even though one material witness has turned hostile.

5. The learned counsel for the complaint while vehemently opposing the bail submits that there are as many as five injuries on the person of the deceased. The said injuries correspond to the version given by the accused to Satinderjit Singh (PW-3) in the nature of extra-judicial confessions. He contends that there is sufficient evidence against the petitioner and his co-accused, and therefore, the petitioner does not deserve the concession of bail. He, however, does not dispute the fact that PW-5-Baldev Singh who is said to have seen the accused in an Innova Car with the deceased-Sharandeep Singh, has not supported the case of the prosecution and that no recovery has been effected from the petitioner.

6. I have heard the learned counsel for the parties at length.

7. In the present case, the deceased is said to have left his house on 28.10.2020. On 06.11.2020, a missing persons report was made by the complainant to the Police Post Naushera, Pannuan. Thereafter, a dead body was discovered on 09.11.2020. It was only on 18.01.2021 that the complainant-Vattandeep Singh filed an application in the office of the Senior Superintendent of Police alleging that his brother had been murdered by Gurjit Singh son of Tarsem Singh and his companions. During the course of proceedings in the present bail application, this Court had directed that the

should be recorded. Pursuant thereto, their examination/cross-examination has taken place. PW-3/Satinderjit Singh is a witness of “an extra judicial confession” but in his cross-examination, he admits that he is a relative of the complainant-party. So far as PW-5-Baldev Singh is concerned, he is the witness of having “last seen” all the accused with the deceased and has been declared hostile. No recovery has been effected from the petitioner. The petitioner is in custody since 29.04.2021 and 05 out of 23 prosecution witnesses have been examined till date. In such a situation, the Trial is certainly not likely to be concluded in the near future.

Even otherwise, it would be a matter of adjudication during Trial as to whether the evidence of “extra judicial confession” and recoveries is sufficient to affix the liability on the petitioner and his co-accused. There is one other case under the NDPS Act bearing FIR No.98 dated 09.06.2019 under Section 21/61/85 NDPS Act registered at Police Station Dharmkot, Moga, wherein the petitioner has been convicted and a fine of Rs.25,00/- has been imposed upon him because the recovery was of 04 grams of heroin. Other than, that there is no other case pending against the petitioner.

8. In view of the aforementioned facts, the further incarceration of the petitioner is not required. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Gurbhej Singh @ Bheja, is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. The petitioner shall appear on the first Monday of every month before the local police station till the conclusion of the trial and furnish an affidavit each time that he is not involved in any crime other than the case(s) referred

10. In addition, the petitioner shall prepare an FDR in the sum of Rs.2,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from Trial without sufficient cause.

(JASJIT SINGH BEDI)
JUDGE

September 13, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No