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

**CRM No.18507 of 2022 in/and
CRM-M No.53413 of 2021
Date of Decision: 27.05.2022**

Pawan Kumar

.....Petitioner

Vs

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sandeep Gahlawat, Advocate
for the petitioner.

Mr. C.L. Pawar, Sr. D.A.G., Punjab.

RAJ MOHAN SINGH, J.

CRM No.18507 of 2022

This is an application under Section 482 Cr.P.C. for placing on record the statement of Jagsir Singh PW-9.

For the reasons mentioned in the application, the same is allowed. Accompanying document is taken on record, subject to all just exceptions.

CRM-M No.53413 of 2021

[1]. Petitioner seeks grant of regular bail in his second attempt under Section 439 Cr.P.C in case bearing FIR No.313 dated 25.11.2019, registered under Section 346 IPC (Sections

302, 201, 203, 120-B IPC added later on) at Police Station Lehra District Sangrur. Earlier petition bearing CRM-M No.30767 of 2021 was got dismissed as withdrawn vide order dated 10.08.2021.

[2]. FIR was lodged by Smt. Golo Kaur with the allegations that she was married to Kala Singh (deceased), who used to remain at home for several days due to injury on his hand. On 22.11.2019, the husband of the complainant went to get dressing on his injury on the hand and thereafter he did not come back. His mobile phone was also found to be switched off. The complainant tried to locate Kala Singh, but did not find any clue about him. The FIR was lodged on the basis of suspicion that some unknown person must have confined the husband of the complainant in a secret manner. The FIR was registered for the offence under Section 346 IPC.

[3]. During course of investigation, it was alleged that the complainant Golo Kaur was having illicit relations with the petitioner. On 29.11.2019, one Jagsir Singh S/o Munshi Singh got his statement recorded under Section 161 Cr.P.C. that on 22.11.2019, he had gone to his relatives in village Meodh and when he was on his way back to village Chudal Kalan and reached at T point Jakhal Bridge at about 9.00 P.M. there he saw Rehri of petitioner (Pawan Kumar) parked there attached

with motorcycle on the side of road. Petitioner and Kala Singh @ Gudia were having some altercation under the effect of liquor and Kala Singh @ Gudia was telling the petitioner not to visit his house in his absence. Since both were known to Jagsir Singh, therefore, he persuaded them to go home. On 29.11.2020, Jagsir Singh came to know that dead body of Kala Singh @ Gudia was fished out from Bhakhra canal. Thereafter Golo Kaur and the petitioner were arrested.

[4]. Petitioner made a disclosure statement that on 22.11.2019, he got boarded Kala Singh on his cart attached with motorcycle and made him to drink the liquor. Thereafter he gave iron rod blow on his head and his dead body was thrown in the river. Petitioner got the *rehri* and iron rod recovered. During investigation, clothes, *chappal* and cap of the deceased were also taken into possession by the Police.

[5]. During investigation Amrik Singh @ Bhola and his sister had also revealed the factum of illicit relation between Golo Kaur and the petitioner. The deceased was lastly seen by Jagsir Singh in the company of petitioner on 22.11.2019.

[6]. Learned counsel for the petitioner submits that there is no direct evidence in respect of alleged complicity of the petitioner except to allege illicit relation between the petitioner and Golo Kaur and the alleged last seen version given by Jagsir

Singh. Proceedings under Section 174 Cr.P.C. were carried out after the dead body was recovered on 29.11.2019. The statement of Amrik Singh @ Bhola i.e. brother of the deceased was recorded to the effect that he along with Golo Kaur was searching his brother Kala Singh. Amrik Singh @ Bhola did not state about the illicit relation between the petitioner and Golo Kaur. At that time, he was supporting Golo Kaur, who was also searching for the deceased Kala Singh. It was only on 29.11.2019, Amrik Singh @ Bhola levelled allegations that Golo Kaur was having illicit relation with the petitioner.

[7]. Learned counsel further submits that no complaint was given by Amrik Singh @ Bhola alleging any suspicion of murder of Kala Singh for about four days. The dead body of Kala Singh was found on 29.11.2019 and in the meanwhile Amrik Singh @ Bhola along with Golo Kaur was searching for Kala Singh and there was no such allegation.

[8]. Learned counsel further submits that Amrik Singh @ Bhola while appearing as PW-2 has virtually resiled from his earlier stand, when he was recalled for cross-examination on 28.09.2021. The witness has deposed that he has not reported the matter regarding missing of his brother to the Police. His sister-in-law Golo Kaur had reported the matter. He had not accompanied Golo Kaur at the time of reporting the matter

regarding missing of Kala Singh. He met his brother last time on 21.11.2019 in the morning. The witness had not seen the wrong act between the petitioner and Golo Kaur, rather he had only heard about the same. He met the Police for the first time on 23.11.2019. Jagsir Singh is *Taya's* son of the witness. His statement was recorded by the Police in the presence of the witness. The witness did not know as to how many times his statement was recorded by the Police. The witness did not remember as to whether his statement was recorded by the Police after 28.11.2019 or not.

[9]. Similarly Jagsir Singh while appearing as PW-9 has also deposed on 24.04.2022 that he has not recorded his statement in the present case before the Police. He has not seen the petitioner and deceased Kala Singh going anywhere together on 22.11.2019, nor has heard any talks between the petitioner and Kala Singh as alleged in his statement under Section 161 Cr.P.C. The witness has resiled from his earlier version.

[10]. Learned counsel further submits that in view of statements of Amrik Singh @ Bhola as PW-2 and Jagsir Singh as PW-9 before the trial Court, the case of prosecution is liable to be discarded. The factum of alleged relation between the petitioner and Golo Kaur is not proved on record. There is no

material on record even to suggest the illicit relation between the petitioner and Golo Kaur except to presume the fact being residents of the same village. Golo Kaur has already been granted regular bail by this Court vide order dated 08.12.2020 passed in CRM-M No.35993 of 2020.

[11]. Per contra, learned State counsel opposed the prayer for grant of regular bail on the ground that the testimonies of PW-2 and PW-9 would be tested by the trial Court at an appropriate stage.

[12]. Material witnesses have been examined. Out of total 29 witnesses, it appears that only 9 witnesses have been examined. In view of material on record, complicity of the petitioner would remain debatable as the statement of Amrik Singh @ Bhola brother of the deceased was recorded two days after recovery of dead body. The aforesaid witness has virtually resiled from his earlier stand while appearing as PW-2. Similarly, Jagsir Singh, who allegedly saw the deceased in the company of petitioner on 22.11.2019 did not disclose any said incident to anyone upto 29.11.2019 and this witness has also resiled while appearing as PW-9. Admittedly, the petitioner is in custody since 30.11.2019. The trial of the case would definitely take sometime in its culmination.

[13]. Looking to the aforesaid facts and without adverting to

the merits of the case, I deem it appropriate to enlarge the petitioner on regular bail.

[14]. In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

[15]. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

May 27, 2022	(RAJ MOHAN SINGH)
Atik	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No