

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

211

CRM-M-739-2022
Decided on : 08.02.2022

Harwinder Singh @ Kaku and another

. . . Petitioners

Versus

State of Punjab

. . . Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

(Through Video Conferencing)

PRESENT: Mr. Ritesh Pandey, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

VIKAS BAHL, J. (Oral)

The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioners namely Harwinder Singh @ Kaku and Manpreet Singh in case FIR No. 33 dated 23.03.2021 under Sections 302, 328, 341, 148, 149, 120-B of Indian Penal Code registered at Police Station Sadar Raikot, District Ludhiana.

Learned counsel for the petitioners has submitted that the present petition qua petitioner No. 2 Manpreet Singh is not being pressed at this stage and accordingly, he seeks to withdraw the present petition qua petitioner No. 2, at this stage.

In view of the statement made by learned counsel for the petitioners, present petition qua petitioner no. 2 namely Manpreet Singh, stands dismissed as withdrawn, at this stage.

Learned counsel for the petitioners has pressed the present petition for bail qua petitioner No. 1.

FIR in the present case was registered on the statement of Jaswinder Singh son of Major Singh, who had stated that he and his brother Rajinder Singh (deceased) were residing in one house as a joint family and when the complainant had gone to his diary farm for milking of buffaloes at about 05:15 AM on 23.03.2021, then Baljinder Singh son of Gurmail Singh came to the fields of the complainant at about 6:30 AM and informed the complainant that dead body of Rajinder Singh, alongwith his scooter, was lying on Rasulpur road and on reaching there, the complainant found that he had died and there were several injuries on the person of the said Rajinder Singh and even the scooter was stained with blood and red chilly powder. The FIR was registered in which it was alleged that unknown persons had murdered Rajinder Singh. As per the case of the prosecution, the present occurrence was witnessed by one Kamaljit Singh whose statement was recorded on 15.05.2021. As per the said witness, he, alongwith one Sikander Singh, was standing at the parking of one Gurudwara Sahib when they heard loud noise and they saw accused/ non-applicant Amandeep Singh, Gurwinder Singh and one unknown person, whose name was ultimately found to be Gursewak Singh, were causing injuries to the deceased Rajinder Singh.

Learned counsel for the petitioner has further submitted that petitioner No. 1 Harwinder Singh has been falsely implicated in the present case. It has been stated that Harwinder Singh has not been named

in the FIR and ever as per the said eye witness, no injury had been inflicted by the present petitioner No. 1 and in fact, as per the examination in chief of the said eye witness Kamaljit Singh, who had been examined as PW-1, it is apparent that the petitioner was not even present at the spot at the time of the occurrence. It is further submitted that the statement of said Kamaljit Singh, who is a relative of the deceased, had been recorded after a period of more than one and a half month from the registration of the FIR i.e. the FIR was registered on 23.03.2021 and the said statement was recorded on 15.05.2021. It is submitted that there is no recovery effected from the petitioner Harwinder Singh and he is not involved in any other case and he is 55 years of age and has been in custody since 21.04.2021 (9 months and 21 days) and challan in the present case has been presented and there are as many as 22 witnesses out of which 16 witnesses are yet to be examined and thus, the trial is likely to take time, moreso in the view of the present COVID-19 pandemic situation.

Learned State counsel as well as learned counsel for the complainant have opposed the present application for regular bail and have submitted that in addition to the eye witness account of Kamaljit Singh, there is an extra judicial confession of the present petitioner and Manpreet Singh (petitioner No. 2) made before Ramandeep Singh, who had given a statement on 06.04.2021 to the police and as per the said extra judicial confession, the present petitioner and Manpreet Singh had admitted that they, alongwith Gursewak Singh, Amandeep Singh and Gurwinder Singh, had committed the murder of the deceased Rajinder

Singh. It is further submitted that there are records of call exchanged between the petitioner Harwinder Singh and Amandeep Singh and also between Harwinder Singh and Manpreet Singh as well as between Harwinder Singh and Gurwinder Singh.

Learned counsel for the petitioner, in rebuttal, has submitted that even the alleged extra judicial confession is stated to have been made before Ramandeep Singh, who is the nephew of the deceased. It is further argued that Ramandeep Singh is neither the *Sarpanch*, nor does he hold any high position of authority and thus, the question of petitioner having made any extra judicial confession before him does not arise. It is further submitted that at any rate, extra judicial confession is a very weak piece of evidence. Even with respect to the call records, it is submitted that as per the challan, there are no details of the conversations exchanged between the petitioner Harwinder Singh and Amandeep Singh, Manpreet Singh or Gurwinder Singh and further, Amandeep Singh and Manpreet Singh are the sons of Harwinder Singh and Gurwinder Singh is the nephew of Harwinder Singh and thus, in case there are some calls between the petitioner and the said persons, the same cannot be taken as an incriminating evidence so as to involve the present petitioner in the present case.

This Court has heard learned counsel for the parties and has perused the paperbook.

It is not in dispute that the FIR in the present case was registered on 23.03.2021 against unknown persons. Jaswinder Singh, the

brother of the deceased, had got the said FIR registered and he had not even alleged suspicion against any particular person. The statement of the alleged eye witness Kamaljit Singh was recorded by the police on 15.05.2021 i.e. after a period of 1 month and 22 days from the registration of FIR . The said Kamaljit Singh has been examined and his statement has been placed on record in CRM-M-43905-2021 which has been filed by Gursewak Singh and which has also been decided today by an order of even date. A perusal of the said statement of the said PW-1 Kamaljit Singh shows that he had stated that he, alongwith one Sikander Singh had witnessed the alleged occurrence on 23.03.2021 and had seen Amandeep Singh, Gurwinder Singh and Gursewak Singh causing injuries to the deceased Rajinder Singh. It is further the statement of said Kamaljit Singh that he did not tell any person about the same as they were afraid of the accused persons. A perusal of the examination-in-chief of the said witness would show that the petitioner Harwinder Singh had not been attributed any injuries inflicted upon the deceased and in fact, the petitioner Harwinder Singh was not even present at the spot of alleged occurrence. In the cross examination, the said Kamaljit Singh, being a relative of the deceased, had admitted the fact that he had attended the funeral ceremony and *Bhog* ceremony of the deceased Rajinder Singh and yet, the fact with respect to his being eye witness in the case was not informed to the family members of the deceased by him. Sikander Singh, who was stated to be the second eye witness, had been given up by the prosecution. As far as the call records pertaining to calls exchanged

between the petitioner Harwinder Singh and his sons and his relative Gurwinder Singh are concerned, it is not in dispute that the details/ contents of the conversations held between the said persons or its transcript is not a part of the challan. The said aspect would be considered at the time of the trial. Even the question as to whether or not the present petitioner had made any extra judicial confession before Ramandeep Singh, who is a relative of the deceased and who is neither stated to be a *Sarpanch*, nor stated to be holding any powerful position and whether on the said basis, the petitioner could be convicted for the murder of the deceased, would again be a matter of trial. It is settled law that an extra judicial confession is a weak piece of evidence. Further, nothing has been recovered from the petitioner-Harwinder Singh. The petitioner is stated to be not involved in any other case and is 55 years of age and is stated to be in custody since 21.04.2021 and thus, the period of 9 months and 21 days has lapsed and there are as many as 22 witnesses out of which 16 witnesses are yet to be examined and thus, the trial is likely to take time, moreso in view of the present COVID-19 pandemic situation.

Keeping in view the facts and circumstances, the present petition qua petitioner No. 1- Harwinder Singh is allowed and petitioner No. 1- Harwinder Singh is ordered to be released on bail, subject to his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to his not being required in any other case.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

It is made clear, in case, the petitioner threatens or influences any witness, it would be open to the State to move an application for cancellation of the present regular bail granted to the petitioner.

(VIKAS BAHL)
JUDGE

February 8th, 2022

Mehak

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No