

CRM-M-14247-2022

-1-

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(201)

CRM-M-14247-2022

Date of decision:- 28.03.2023

Balwinder Singh @ Binda

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. J.S.Dadwal, Advocate for the petitioner.

Mr. Rohit Bansal, Senior DAG, Punjab for State-respondent.

Mr. R.S.Manhas, Advocate for the complainant.

SUVIR SEHGAL, J. (ORAL)

This is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 (for short “the Code”) seeking grant of post-arrest bail in case FIR No.22 dated 04.04.2019, registered for offences under Sections 302 and 34 of the Indian Penal Code, 1860, at Police Station Shahpur Kandi, District Pathankot, Punjab, Annexure P-1.

Case of the prosecution is that FIR, Annexure P-1, has been lodged by Deepak Pathania stating that his father has four brothers, who jointly own eight acres of agricultural land, which is located outside the village, where the Haveli is constructed. The brothers used to take turns to go and sleep in the Haveli. On 03.04.2019, after dinner at about 09:30 P.M., his maternal uncle, Surjit Singh, went to sleep at the Haveli. The next morning at about 06:45 A.M., when he went to the agricultural fields along with his friend, Rajiv Pathwal @ Rocky, he noticed that the gate of Haveli

CRM-M-14247-2022

-2-

was bolted from inside. After jumping over the wire fencing, they found that his uncle was lying dead on a bench with his hands and feet tied and blood was oozing out from his mouth. Information was given by the complainant to his wife.

Counsel for the petitioner has contended that the petitioner is not named in the FIR, but on the basis of a supplementary statement, Annexure P-1, which has been recorded by the complainant five days later, petitioner has been falsely framed for committing the murder. Counsel urges that besides the petitioner, allegation was also levelled against Gandharav Singh, but during the investigation, he was found to be innocent and has been summoned as an additional accused on application filed by the prosecution under Section 319 of the Code. Counsel submits that trial has started de novo and the testimony of the complainant has been recorded. Counsel contends that the previous petition, preferred by the petitioner, was withdrawn, after arguments on 23.08.2021, Annexure P-7, and thereafter, the complainant and some other material witnesses have been examined and the petitioner, who is in custody since 15.04.2019, deserves to be enlarged on bail.

Opposing the petition, learned State counsel, who is assisted by counsel for the complainant, submits that a blood stained towel (*parna*) has been found on the spot, which has been identified to be that of the petitioner. He submits that as per the FSL report, the stains on the towel have been found to be of human blood. It has been submitted that the complainant has specifically stated the petitioner and co-accused were seen fleeing from the spot by scaling a boundary wall. Reference has also been

CRM-M-14247-2022 -3-

made by the State counsel upon the statement of Rajiv Pathwal @ Rocky recorded during the course of investigation. Still further, upon instructions, he submits that eight of twenty five prosecution witnesses have been recorded.

Having considered the submissions made by counsel for the parties, this Court is prima facie of the view that the complicity of the petitioner in the homicide of Surjit Singh would remain controvertible before the Trial Court. Considering the long incarceration of the petitioner, which by now is of more than forty seven months and the stage of trial, this Court is favorably inclined to accept the prayer made in the petition.

Without adverting to the merits or demerits of the arguments addressed by counsel for the parties, petition is allowed. Petitioner is ordered to be released on bail on furnishing adequate bail/surety bonds to the satisfaction of the Area Magistrate/Duty Magistrate concerned.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

28.03.2023
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No