

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

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CRM-M-15569-2022(O&amp;M)

Date of decision : 22.03.2023

Gursewak Singh @ Guri @ Golu

... Petitioner

Versus

State of Punjab

... Respondent

***CORAM: HON'BLE MR.JUSTICE VIKAS BAHL***

Present: Mr.Amit Jhanji, Senior Advocate with  
Mr.Swarn Tiwana, Advocate and  
Mr.Himmat Singh Sidhu, Advocate  
for the petitioner.

Mr.Yadwinder S. Bhangu, AAG, Punjab.

Mr.Manish Verma, Advocate  
for the complainant.

**VIKAS BAHL, J.(ORAL)**

This is a second petition filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.33 dated 23.03.2021 registered under Sections 302, 328, 341, 34 IPC (Sections 148, 149, 120-B IPC have been added later on) at Police Station Sadar Raikot, District Ludhiana.

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) used to reside in one house as a joint family and on 23.03.2021 at about 05:15 AM, the complainant had gone to his dairy farm for milking the buffaloes, when at about 6:30 AM, Baljinder Singh son of Gurmail Singh came to the fields of the complainant and informed the

lying on Rasulpur road and on reaching there, the complainant found that Rajinder Singh 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. FIR was registered, wherein, it had been alleged that unknown persons had murdered the brother of the complainant namely Rajinder Singh. As per case of the prosecution, the statement of Surinder Singh son of the deceased was recorded on 05.04.2021, in which, he had stated that his father Rajinder Singh used to call him and used to tell him that Harwinder Singh, along with sons Manpreet Singh and Amandeep Singh, used to harass him. Said Surinder Singh had also stated that Harwinder Singh, Manpreet Singh and Amandeep Singh along with the present petitioner and one more person i.e., Gurwinder Singh, as per the information gathered by him, killed the deceased. Thereafter, on 06.04.2021, the statement of one Ramandeep Singh was recorded, who is also a relative of the deceased and he had stated that said Harwinder Singh, Manpreet Singh and Amandeep Singh as well as the present petitioner, along with one more person, had come to his shop and had made an extra-judicial confession admitting the fact that the said persons had killed the deceased. On the basis of the said material collected, the present petitioner was arrested on 12.04.2021 and thereafter, on 15.05.2021, the statement of one Kamaljit Singh, who is also a relative of the deceased, was recorded on 15.05.2021 and the said person had stated that he saw Amandeep Singh, Gurwinder Singh and one unknown person inflicting injuries upon the deceased-Rajinder Singh.

Learned Senior Counsel appearing on behalf of the petitioner has submitted that the petitioner has been falsely implicated in the present

statement of Kamaljit Singh, which had been recorded after a period of more than 1 ½ month from the date of the occurrence, the petitioner was not named. It is also stated that it is in the examination-in-chief of said Kamaljit Singh which had been conducted on 15.11.2021, that the unknown person was stated to be the present petitioner. Learned Senior Counsel for the petitioner has argued that as per cross-examination of said PW1, it was specifically stated that he was a relative of the deceased and that prior to 15.05.2021, neither he got recorded any statement nor moved any complaint in the said regard and had not disclosed the incident to anyone, not even to the son of the deceased about having seen the alleged incident and thereafter, neither did he take the deceased to a hospital nor he narrated the incident to the complainant Jaswinder Singh after the murder had taken place. Learned Senior Counsel for the petitioner has submitted that there is an unexplained delay of 1½ months, on account of which, the said witness cannot be treated to be a trustworthy witness. It is further submitted that even the alleged extra judicial confession is stated to have been made before one 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 position of authority, thus, the question of petitioner having made any extra judicial confession before him does not arise. It is further submitted that at any rate, an extra judicial confession is a very weak piece of evidence and has further submitted that even as per the said extra-judicial confession made before Ramandeep Singh, the petitioner had no motive to kill the deceased and the alleged motive vested with Harwinder Singh, Amandeep Singh and Manpreet Singh. With respect to the statement of Surinder Singh @ Sherry (son of the deceased), it is submitted that the same had been

registration of the FIR. It is further submitted that said Surinder Singh @ Sherry was residing in Canada and had come back on 26.03.2021 and thus, he was not in India on the date of the alleged incident. It is also submitted that neither the said person is an eye witness nor there is any tangible material on the basis of which, it could be stated that he arrived upon the conclusion that the present petitioner was involved in the present case. It is further submitted that even as per the examination-in-chief of Kamaljit Singh, who has been examined as PW1 on 15.11.2021, the role attributed to the petitioner was that he was carrying a stick in his hand and had given stick blows on the person of Rajinder Singh on his back and thigh. It is argued that the alleged act of putting chilly powder in the eyes of deceased and even the injuries caused due to *kirpan* blow had been attributed to the co-accused Amandeep Singh and Gurwinder Singh, as per the said statement of PW1. It is further submitted that even as per the Postmortem report, at best, only injury nos.12 and 13 on the deceased could be attributed to the present petitioner (if assumed to be true) of which injury no.12 is a contusion on the left thigh and injury no.13 is on the right shoulder and all the other injuries are neither on the thigh nor on the back of the deceased. It is argued that the petitioner was arrested on 12.04.2021 and thereafter, since, he was found to be HIV positive, he was released on interim bail on 02.06.2022 and he was on interim bail till 29.11.2022 and since 29.11.2022, he has been in custody and thus, total custody of the petitioner is 1 year and 4 months. It is stated that out of 22 prosecution witnesses, only 7 witnesses have been examined and thus, the conclusion of trial is likely to take time and co-accused of the petitioner namely Manpreet Singh and Harwinder Singh have been granted the concession of regular bail by this Court.

counsel for the complainant have submitted that in the extra-judicial confession before Ramandeep Singh, apart from Harwinder Singh, Amandeep Singh and Manpreet Singh, the present petitioner had also specifically suffered the extra-judicial confession and had stated to have participated in the incident in question. It is further argued that Kamaljit Singh, in the present case, is an eye-witness and in his examination as PW1 on 15.11.2021, he had stated that there was one unknown person and the said unknown person was the present petitioner. It is stated that the motorcycle used at the time of occurrence has also been recovered from the petitioner and the same belongs to the father of the petitioner.

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

It is not in dispute that the FIR in the present case was registered on 23.03.2021 against unknown persons. Jaswinder Singh i.e., the brother of the deceased, had got the present FIR registered and he had not levelled suspicion against any particular person. Statement of the alleged eye witness i.e., Kamaljit Singh, was recorded by the police on 15.05.2021 i.e., after a period of 1 month and 22 days from the date of registration of the FIR . Said Kamaljit Singh has been examined and his statement has been placed on record as Annexure P-2. In the cross examination, 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 factum of him being an eye witness to the alleged occurrence 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 side. The question as to whether or not the

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 of authority and whether on the said basis, the petitioner could be convicted for the murder of the deceased or not, would be a matter of trial. It is settled law that an extra judicial confession is a weak piece of evidence. Moreover, Surinder Singh @ Sherry, whose statement has been recorded under Section 161 Cr.P.C. and has been referred to by learned State counsel as well as learned counsel for the complainant, would also not come in way of the petitioner being granted the concession of regular bail, inasmuch as, the said Surinder Singh @ Sherry is not an eye witness to the alleged occurrence and was not even in India on the date of the said incident. Further, weightage to be lent to the said statement, would be considered at the time of trial. The petitioner was arrested on 12.04.2021 and out of 22 witnesses, 15 witnesses are yet to be examined and thus, the trial is likely to take time. The petitioner was released on interim bail from 02.06.2022 till 29.11.2022 on account of being an HIV patient and has not misused the concession of interim bail during the said period. Moreover, the co-accused of the petitioner namely Manpreet Singh has been granted the concession of regular bail vide order dated 27.04.2022 passed in CRM-M-9198-2022.

Keeping in view the facts and circumstances, the present petition is allowed and the petitioner 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

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.

Learned counsel for the complainant has raised an apprehension with respect to the petitioner threatening the father of the deceased and the other witnesses.

In order to alleviate the apprehension of the complainant, the petitioner is directed not to go within a radius of 500 meters from the house of the complainant, during the pendency of trial.

Pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

(VIKAS BAHL)  
JUDGE

March 22, 2023  
*Davinder Kumar*

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|-----------------------------|--------|
| Whether speaking / reasoned | Yes/No |
| Whether reportable          | Yes/No |