

210 (3 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) CRM-M-18245-2022 (O&M)

SHIVRAJ SINGH @ KHARAJI
...Petitioner

Versus

STATE OF PUNJAB
...Respondent

(2) CRM-M-48732-2022 (O&M)

LAKHBIR SINGH @ MOTTU
...Petitioner

Versus

STATE OF PUNJAB
...Respondent

(3) CRM-M-48916-2022 (O&M)
Date of decision :August 18th, 2023

SUKHBIR SINGH @ SONI
...Petitioner

Versus

STATE OF PUNJAB
...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. JasdeepSinghWalia, Advocate
and Mr. Akamjit Singh Ahluwalia, Advocate
for the petitioner (in **CRM-M-18245-2022**).

Ms. Archana Arora, Advocate
for Dr. Rau P.S. Girwar, Advocate
for the petitioner(s)
(in**CRM-M-48732-2022** and **CRM-M-48916-2022**).

Mr. Harjinder S. Sidhu, A.A.G., Punjab.

Mr. Naveen Sharma, Advocate
for the complainant (in all the cases).

HARSH BUNGER, J.

This order shall dispose of three petitions bearing ***CRM-M-18245-2022*** titled as “***Shivraj Singh @ Kharaji Versus State of Punjab***”, ***CRM-M-48732-2022*** titled as “***Lakhbir Singh @ Mottu Versus State of Punjab***” and ***CRM-M-48916-2022*** titled as “***Sukhbir Singh @ Soni Versus State of Punjab***” as all of them have emanated from common FIR.

2. Prayer in all these three petitions, filed under Section 439 of the Code of Criminal Procedure (for short `the Cr.P.C.), is for grant of regular bail to petitioners namely, Shivraj Singh @ Kharaji, Lakhbir Singh @ Mottu and Sukhbir Singh @ Soni, in case FIR No.148 dated 10.07.2020, under Sections 302, 364, 201, 120-B, 323, 148 and 149 of the Indian Penal Code (for short `the IPC’), registered at Police Station Maur, District Bathinda.

3. Custody certificates of petitioners namely, Shivraj Singh @ Kharaji, Lakhbir Singh @ Mottu and Sukhbir Singh @ Soni, in all these three petitions have been filed by learned State counsel, which have been taken on record on the respective case files, vide order dated 19.05.2023.

4. Briefly, the aforesaid case FIR was registered on the complaint of one Balvir Kaur, alleging therein that she was married to Sukhchand Singh around 27-28 years back and they had one daughter Ekampreet (25 years) and one son Amrinder Singh @ Manja (23 years). As per the complainant, her husband Sukhchand Singh died about two years ago and on 09.07.2020, at about 8:00 P.M. her son Amrinder Singh @ Manja had gone for a walk after taking his meals in a park Maur Kalan near Raghupati Dharamshala as per his routine and when he did not return for some time, then the complainant went towards the park to see him, then

one Maruti Car came there and she noticed in the lights emitting from the neighbourhood that in the car there were Kharaji Singh s/o Amarjeet Singh, Sukhveer Singh @ Soni, Lakhvir Singh @ Motu sons of Sham Singh, Manga Singh s/o Pritam Singh and 4-5 unidentified persons on their motorcycles bearing No. PB-80-1789 (Splender) and PB-80-2495 (Platina) and they started forcibly putting her son (who was in the park) in the car. As per the complainant, she along with one Jaswinder Singh @ Judge s/o Bhola Singh who is also stated to be present in the park, tried to resist the assailants but they caused injuries to Jaswinder Singh @ Judge and forcibly put her son in the car and fled away. As per the complainant, she along with the neighbours and relatives started inquiring about her son and in the morning, her son-in-law Gagandeep Singh s/o Kulwant Singh came to her, who was also looking for her son and told her that he has come to know that dead body of Amrinder Singh @ Manja was trapped in the bushes of the Canal Kotla Branch, Bridge Khetawala in the area of village MaurCharat Singh, whereupon the complainant along with her son-in-law Gagandeep Singh and one Sukhpal Singh @ Sukhi rushed to that place and after identifying, took out the dead body of her son from the canal. As per the complainant, she is of firm belief that Kharaji Singh, SukhveerSingh @Soni, Lakhvir Singh @ Motu and Manga Singh of MaurKalan along with 4-5 unidentified persons had forcibly abducted and murdered her son and threw his body in the Canal Kotla Branch after causing him injuries with the sharp edged weapons on his head, face, chin, right leg, left arm. It is alleged that the motive for causing the injuries was that her son had a quarrel with Kharaji Singh and others a few days ago. It is alleged that the said persons after having common intention had abducted her son and killed him. Accordingly, the aforesaid case FIR has been registered.

5. Petitioners namely, Shivraj Singh @ Kharaji, Lakhbir Singh @ Mottu and Sukhbir Singh @ Soni, had applied for their respective regular bail before the Court of learned Additional Sessions Judge, Bathinda; however, the same were dismissed vide separate orders dated 21.03.2022, 26.08.2022 and 26.08.2022, respectively.

6. All these three petitioners have now filed their respective petitions before this Court, by submitting that they are innocent and have falsely been implicated in the present case. It is submitted that there is an inordinate delay in lodging the FIR, considering the fact that the alleged occurrence is stated to have taken place in presence of the complainant and one Jaswinder Singh @ Judge on 09.07.2020 at about 08:00 P.M. whereas, the FIR was got registered on 10.07.2020 at about 3:15 P.M. It is submitted that there is no direct eye witness regarding the allegation of the murder and the prosecution story is falsified from the mere fact that the son of the complainant was allegedly abducted by the petitioners on 09.07.2020 in the presence of the complainant and one Jaswinder Singh @ Judge; however, the matter was not reported to the police on 09.07.2020 nor to any other person. It is submitted that even as per the allegations contained in the FIR, at the time of occurrence, Jaswinder Singh @ Judge is stated to have suffered injuries when he was trying to resist the accused persons. It is further submitted that as per the post-mortem report, there are total 13 injuries on the body of the deceased Amrinder Singh @ Manja and the alleged weapon(s) have been foisted upon the petitioners. It is also submitted that as per the FIR, the information regarding the dead body of the deceased is stated to be given by Gagandeep Singh (son-in-law of the complainant); however, it is not forthcoming as to who informed Gagandeep Singh about the dead body lying in the bushes and why the

matter was not reported to the police. It is submitted that instead of reporting the matter to the police, the complainant along with Gagandeep Singh themselves went to the spot to take out the dead body from the bushes of canal. Learned counsel for the petitioners (in all three petitions) submit that the present case is based upon the shoddy investigation of the police and the police has not investigated the tower location and CDR report of the petitioners' mobiles. It is contended that Jaswinder Singh @ Judge, was examined as PW-1 in this case, has changed his version. It is further contended that the aforesaid witness Jaswinder Singh @ Judge, is himself involved in the NDPS case and is trying to give false evidence against the petitioners. It is next contended that deceased Amrinder Singh @ Manja, was related to a local gang and was always threatening the local youngsters and there were complaints against him, including the complaint submitted by the mother of Sukhbir Singh @ Soni and due to that grudge, the complainant has falsely implicated the petitioners. It is stated that the petitioners are in custody since 12.07.2020; investigation in this case is complete; challan stands presented and even charges have been framed on 14.03.2022. Learned counsel for the petitioners submit that out of 25 prosecution witnesses, only one witness has been examined till date, thus, the trial in this case is likely to take long time and no useful purpose would be served by keeping the petitioners behind the bars for indefinite period. It is further stated that the petitioners are ready to abide by all the conditions as may be imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail is made.

7. *Per contra*, learned State counsel has opposed the prayer of petitioners for grant of regular bail on the ground of seriousness and gravity of the offence. It is submitted that there are specific allegations against the

petitioners and the offence relates to death of the son of the complainant namely Amrinder Singh @ Manja. It is next submitted that the regular bail of another co-accused namely Manga Singh, being **CRM-M-13281-2022** was dismissed by this Court vide order dated 19.07.2022, by noticing that Manga Singh was specifically named in FIR and was identified by complainant at the spot. It is further submitted that since the allegations levelled against the petitioners are serious in nature, accordingly there is strong apprehension that if they are released on bail then they may tamper evidence by threatening or influencing the prosecution witnesses or may abscond and flee from justice which may delay the trial; accordingly, prayer for dismissal of the above-mentioned petitions has been made.

8. I have heard learned counsel for the parties and perused the paper books as well as the custody certificates filed by learned counsel for the respondent-State of Punjab, in all the above-said three petitions.

9. A perusal of the FIR would show that the petitioners herein have been specifically named in the FIR and have been identified by the complainant at the spot. The petitioners are facing serious charges for murder of Amrinder Singh @ Manja, who is the son of the complainant and there were multiple fatal injuries on his body, including head and face. The offence under Section 302 of the IPC is the gravest and serious in nature. The submissions made by learned counsel for the petitioners regarding the manner in which the case was registered after a delay of almost 17 hours and also that the alleged eye witness i.e. Jaswinder Singh @ Judge who also suffered an injury on 09.07.2020 while resisting the attempt of the petitioners while taking the son of the complainant, having not reported the matter promptly, would be a subject matter of trial. Furthermore, considering the specific allegations against one of the main accused

namely, Manga Singh, that he was named in the FIR and had been identified by the complainant at the spot and his complicity is evident; the Co-ordinate Bench of this Court vide order dated **19.07.2022** passed in **CRM-M-13281-2022**, dismissed the regular bail petition filed by him.

10. Although, the petitioners have been in custody since 12.07.2020 and out of total 25 prosecution witnesses, only 01 witness has been examined till date; however, in my considered opinion, the petitioners cannot be released on bail solely on the basis of long incarceration in jail or on the ground that the trial is not likely to be concluded in near future; especially when the petitioners are being tried for a serious and heinous offence of murder of son of the complainant. In **Kalyan Chandra Sarkar v. Rajesh Ranjan @ PappuYadav, 2004(2) RCR (Criminal) 254**, Hon'ble Apex Court held as under:

"The condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to be enlarged on bail, nor the fact that the trial is not likely to be concluded, in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

11. As per the settled position of law, gravity and seriousness of the offence is a relevant consideration for the purpose of grant of bail. Further, the Hon'ble Apex Court in ***NeeruYadavvs State of Uttar Pradesh 2014(16) SCC 508***, observed as under :-

“A society expects responsibility and accountability from its members, and it desire that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious matter ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At this stage, the court has duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.”

12. Concededly, the trial in this case is undergoing. The guilt of the accused shall be determined during the trial. The apprehension expressed by the State counsel that if released on bail, there is every likelihood of the petitioners trying to tamper with the prosecution evidence by giving threats and inducement to the prosecution witnesses and absconding even to prolong the trial, cannot be brushed aside lightly.

13. Keeping in view the gravity and seriousness of offence and also the likelihood of petitioners tampering with the prosecution evidence and even absconding, no ground for grant of regular bail to the petitioners is made out. The present three petitions i.e. ***CRM-M-18245-2022; CRM-M-48732-2022*** and ***CRM-M-48916-2022*** qua petitioners namely, Shivraj Singh @ Kharaji, Lakhbir Singh @ Mottu and Sukhbir Singh @ Soni, are accordingly dismissed. However, keeping in view the fact that the petitioner was arrested on 12.07.2020 and charges were framed on 14.03.2022, the trial Court shall make an endeavour to expedite the trial.

14. Nothing stated here-in-above shall be construed as an expression of opinion on the merits of the cases and the trial would proceed independently of the observations made in the present cases which are only for the purpose of adjudicating the present bail petitions.
15. Pending application/s, if any, shall also stand disposed of.
16. A photocopy of this order be placed on the files of other connected cases.

August 18th, 2023	(HARSH BUNGER)
<i>Himani/gurpreet</i>	JUDGE
Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No