

CRM-11572-2023 in/and CRM-M-19057-2023

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(107+215) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-11572-2023 in/and
CRM-M-19057-2023

Date of Decision: 16.03.2023

RAJPAL SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CRM-M-33977-2022

HARJEET SINGH

....Petitioner

Versus

STATE OF PUNJAB

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Mandeep Singla, Advocate
for the petitioners.

Ms. Ramta Chaudhary, DAG, Punjab.

Mr. Arshpreet Khadial, Advocate
for the complainant.

JASJIT SINGH BEDI, J.

CRM-11572-2023 in CRM-M-19057-2023

The present application has been filed by the applicant-petitioner
for placing on record Annexure R-1 i.e. application to SSP, Bathinda dated
05.11.2020.

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For the reasons mentioned in the application, the same is allowed and Annexures R-1 i.e. application to SSP, Bathinda dated 05.11.2020 is taken on record.

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This order shall dispose of two petitions bearing No.CRM-M-19057-2022 titled as Rajpal Singh Versus State of Punjab and CRM-M-33977-2022 titled as Harjeet Singh Versus State of Punjab. For the sake of convenience, the facts are being taken from CRM-M-19057-2022 as both these petitions are arising out of the same FIR.

2. The prayer in the present petitions under Section 439 Cr.P.C is for the grant of regular bail in case bearing FIR No.242 dated 07.11.2020 (Annexure P-1) registered under Section 346 IPC and Sections 302, 201, 120-B IPC (added later on) at Police Station Maur, District Bathinda.

3. The brief facts of the case are that one Lakhveer Singh son of Gobinder Singh filed an application to the SHO, Police Station, Maur stating that he was a Lecturer. His father had retired from the Army and was on a pension. On 03.11.2020 his father Lakhveer Singh had left the house in the morning by stating that he was going to Chandigarh along with Harjeet Singh (petitioner in CRM-M-33977-2022) son of Rajpal Singh (petitioner in CRM-M-19057-2022) son of Gobinder Singh for effecting a compromise. At about 02.30 PM, his mother called on the mobile number of his father and inquired as to what time he would be back. His father disclosed that he was at Jodhpur Pakhar and would come back by the evening. Later when they (complainant party) tried to contact his father, the phone was found to be switched off. At

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about 08.00 PM, they (complainant party) had a telephonic talk with Harjeet Singh (petitioner in CRM-M-33977-2022) asking as to the whereabouts of their father. The said Harjeet Singh stated that he did not know the whereabouts.

Based on the said complaint, an FIR came to be registered under Section 346 IPC on 07.11.2020. Thereafter, the dead body of the deceased (Lakhveer Singh) was discovered on 09.11.2020 from the Canal, Kotla Branch at Village Jodhpur Pakhar. As per the report of the viscera (obtained subsequently), the exhibits contained "ORGANOPHOSPHORUS".

After the registration of the FIR under Section 346 IPC, the matter was investigated by the CIA staff and on the statement of the complainant-Kulvir Singh son of the deceased-Lakhveer Singh, the offence under Section 302/201/120-B IPC came to be added and Harjeet Singh son of Rajpal Singh, Rajpal Singh son of Gobinder Singh and Sukhwinder Kaur @ Rajvir Kaur wife of Rajpal Singh came to be nominated as accused. During investigation, the accused petitioners confessed that they had given Etizolam liquid to the deceased after which they threw him in the canal along with the mobile phone. The statement of Sukhvinder Singh son of Gobinder Singh, the brother of the deceased was recorded who stated that he had seen the deceased last in the company of the accused in the evening of 03.11.2020. The said statement under Section 161 Cr.P.C. is dated 11.11.2020.

The statement of one Naib Singh was recorded under Section 161 Cr.P.C. as per which Sukhwinder Kaur alias Rajvir Kaur wife of Rajpal Singh (accused) had made an extra-judicial confession before him (Naib

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Singh) on 15.11.2020 that she along with her son Harjeet Singh and her husband Rajpal Singh had committed the offence in question on account of an earlier FIR and a pending land dispute.

Based on the evidence collected, the report under Section 173 Cr.P.C. was presented on 08.02.2021. Charges came to be framed on 10.09.2021 and two material witnesses already stands examined. In total, 30 witnesses are cited in the list of witnesses and 03 have been examined till date.

4. The learned Senior counsel for the petitioners contends that there are two specific pieces of evidence against the petitioners. Firstly, there is the last seen evidence of Sukhvir Singh son of Gobinder Singh, the real brother of the deceased and the second piece of evidence is the statement of Naib Singh, the co-brother (Sadhu) of Lakhveer Singh (deceased) before whom Sukhwinder Kaur alias Rajvir Kaur is said to have made an extra-judicial confession.

As per the learned Senior counsel, the deceased is stated to have left home on 03.11.2020 and the instant FIR came to be registered on 07.11.2020. The dead body was discovered on 09.11.2020. The statement of Sukhvir Singh was recorded under Section 161 Cr.P.C. regarding him being a witness of last seen of the deceased with the accused on 11.11.2020. It is his contention that the version of Sukhvir Singh cannot be believed as the said Sukhvir Singh had chosen not to provide any such information to either the complainant or the police authorities between 03.11.2020 and 10.11.2020. This delay in recording of his statement is fatal to the case of the prosecution.

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In fact, Sukhvir Singh is the real brother of the deceased and the step-brother of Rajpal Singh (petitioner in CRM-M-11572-2023) and is clearly inimical to the accused persons. He however states that taking his statement to be true, the same would not inculcate the petitioners as the evidence of last seen pertains to 03.11.2020, whereas the dead body was discovered on 09.11.2020 and therefore, the time gap between the last seen and the discovery of the dead body was sufficient for the intervention of a third party to commit the offence in question. The last seen theory assumes importance only where the time gap between the last seen evidence and the discovery of the dead body is closed in proximity of time which is not so in the instant case.

As regards the statement of one Naib Singh before whom Rajvir Kaur alias Sukhwinder Kaur is alleged to have made an extra-judicial confession, the Senior counsel contends that the said statement under Section 161 Cr.P.C. was recorded on 17.11.2020. As per the said statement, it was Rajvir Kaur alias Sukhwinder Kaur alone who had gone to the house of Naib Singh on 15.11.2020 and confessed to have committed the offence along with her co-accused. Not only was the evidence of an extra-judicial confession an extremely weak kind of offence but would have even lesser evidentiary value when it is made to a person who is connected to the complainant party. In the instant case, it does not stand to reason that a confession in this regard would be made to a co-brother of the deceased. Therefore, this extra-judicial confession is also a weak piece of evidence. Even otherwise, Sukhwinder Kaur alias Rajbir Kaur had been granted the concession of anticipatory bail

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by this Court vide order dated 13.01.2023 (Annexure P-10) passed in CRM-M-42540-2020.

He lastly contends that the petitioners are in custody since 11.11.2020. 30 witnesses have been cited in the list of witnesses out of which 03 had been examined. Two of the material witnesses have been examined as has been discussed hereinabove. Once the material witnesses already stand examined and the petitioners do not have any criminal antecedents, the petitioners could be granted the concession of bail as the question of tampering with the evidence did not arise. Reliance is placed on the judgment of the Hon'ble Supreme Court in “Dr. Gokarakonda Naga Saibaba Versus State of Maharashtra, 2016(2) RCR (Criminal) 675 and this Court in “Devender Singh @ Devender Chhabra @ Tintu Versus State of Punjab, CRM-M-27957-2015 decided on 22.08.2016 wherein, it has been held that grant of bail can be considered, where witnesses stand examined.

5. On the other hand, the learned State counsel submits that there is sufficient evidence to establish the culpability of the petitioners. They had the necessary motive to commit the offence in question. As per their confessional statement, they had caused the death of the deceased by giving him Etizolam liquid. As per the opinion of the doctor, the time between the death and the post-mortem was six days and therefore, once the body was discovered on 09.11.2020, the deceased might have died on or around 03.11.2020 and so, the opinion of the doctor fits in with the evidence of last seen. He therefore contends that the petitioners did not deserve the concession of bail.

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6. The learned counsel for the complainant has vehemently and eloquently argued that the sequence of events would establish that the petitioners have committed the offence in question. The deceased went missing on 03.11.2020. The first complaint was made to Police Station Maur on 04.11.2020. As no action had been taken by the police, an application was moved to the Senior Superintendent of Police, Bathinda on 05.11.2020. Thereafter, the instant FIR came to be registered on 07.11.2020 and the body came to be discovered on 09.11.2020. As per the doctor's opinion, the deceased had died six days prior to the date of discovery of the body. Therefore, the evidence of last seen was corroborating the medical evidence regarding time of death. This along with the evidence of last seen and extra-judicial confession would leave no doubt that the petitioners had committed the offence in question and were therefore not entitled to the grant of bail.

7. I have heard the learned counsel for the parties at length and perused the record.

8. Admittedly, the case is based on circumstantial evidence. The evidentiary value of the statements of Sukhvir Singh who is the witness of last seen and of Naib Singh who is the witness of the extra-judicial confession shall be adjudicated upon during the course of Trial. The petitioners are in custody since 11.11.2020 and two material witnesses already stand examined. Therefore, the question of threatening or intimidating the witnesses does not arise. As many as 30 witnesses are cited out of which only 03 have been examined till date. Therefore, the Trial of the present case is not likely to be concluded anytime soon. Since the petitioners

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do not have any criminal antecedents, they can be granted the concession of bail.

9. Thus without commenting on the merits of the case, the present petitions are allowed and the petitioners are ordered to be released on bail subject to their furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

10. The petitioners shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that they are not involved in any other crime other than the present case.

11. If the petitioners or their family members/associates make any attempt to contact/threaten/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted vide this order.

12. In addition, the petitioners (or anyone on their behalf) shall prepare an FDR in the sum of Rs.1,00,000/- each and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioners from trial without sufficient cause.

13. Petitions stand disposed of.

(JASJIT SINGH BEDI)
JUDGE

16.03.2023

JITESH

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