

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: October 12, 2023
Date of Decision: October 17, 2023

CRM-M-22292-2023

Kulvir Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Rahul Sharma-I, Advocate for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

Mr. Mohit Vashisht, Advocate for PW-Mann Singh.

DEEPAK GUPTA, J.

By way of this petition filed under Section 439 Cr.P.C, petitioner prays for grant of regular bail in a case arising out of FIR No.92, dated 16.05.2022, under Sections 302, 148 and 149 Of IPC, registered at Police Station Samrala, District Ludhiana.

2. FIR was lodged on the statement of Bhajan Singh S/o Daleep Singh, resident of village Kuhli Kalan, District Ludhiana. His son Avtar Singh (deceased) had developed friendship with a girl, namely, Simran Kaur, resident of village Majali Kalan, Police Station Samrala. Both of them i.e., Avtar Singh and Simran Kaur used to have conversation on phone. As per complainant, about 10 days back, they came to know that girl Simran Kaur had run away from her house with some other boy. However, family members of the girl were suspecting the role of his son Avtar Singh. On 15.05.2022, complainant along with his brother Jagroop

Singh and other respectables of the village took his son Avtar Singh to the Dera Gursewak Singh S/o Maghar Singh and alongwith other people from the Dera, they went to village Majali Kalan of the girl to hold talks with the family members of girl Simran Kaur. They were in an enclosure of Nihang (a member of Baptized Sikh) where Hardeep Singh @ Laadi and Kulvir Singh (present petitioner) S/o Nachhattar Singh were already present. All those people were putting pressure upon his son Avtar Singh to confess that girl Simran Kaur was with him. They started giving severe beatings with *dandas*, *batons* and kick blows to Avtar Singh and forcibly took him inside the Dera of Gursewak Singh. On next day, i.e., 16.05.2022 at about 12 in the noon, he received a call that all the accused, in conspiracy with each other by giving beatings to his son Avtar Singh, had killed him in the Dera of Gursewak Singh. FIR was registered. Investigation was conducted. Petitioner along with co-accused were put to trial.

3. It is contended by learned counsel for the petitioner that said petitioner has been falsely implicated; that investigation is already complete and that during trial, three alleged eye witnesses, who are relatives of the deceased, namely, Bhajan Singh (father of deceased), Jagroop Singh (chacha of deceased) and Bant Singh (Taya of deceased), have not supported the prosecution version and they have not identified the petitioner. It is further submitted that petitioner is not keeping good health and is suffering from Prostatomegaly Grade-I, for which he requires constant treatment. Learned counsel further submits that the

petitioner is in custody for the last more than 01 year and 04 months; that trial may take time to conclude and so, in all these circumstances, he be allowed regular bail.

4. Although, status report is not filed, but learned State counsel has drawn attention towards the order dated 12.04.2023 passed by learned Addl. Sessions Judge, Ludhiana, whereby the bail application of the petitioner was dismissed and in which it was observed that one important eye witness-Mann Singh, whose statement under Section 161 Cr.PC had been recorded, was yet to be examined.

5. On 09.05.2023, power of attorney was filed on behalf of said witness-Mann Singh. It was disclosed by counsel appearing for PW-Mann Singh that because of the threats extended to the witness, he had been in the hiding and was not appearing. He made a prayer to direct the Trial Court for getting his statement recorded through video conferencing. Necessary direction to the Trial Court was given. Statement of PW-Mann Singh has since been recorded. Certified copy thereof was placed on record, in which he has supported the prosecution version.

6. Learned counsel for the petitioner has contended that statement of PW-Mann Singh is not reliable, as he is a planted witness and inimical to the family of the petitioner, as has emerged in his cross-examination and since the close relatives of the deceased including the complainant have already turned hostile, so petitioner be allowed bail.

7. Refuting the aforesaid contention, learned State counsel submits that PW-Mann Singh has supported the prosecution case and that

relatives of the deceased did not support the prosecution case because of the life threats to them. Learned State counsel submits that PW-Mann Singh was able to depose against the petitioner because he is in U.S.A. and his statement has been recorded through video conferencing. Prayer is made for rejecting the bail petition.

8. I have considered submissions of both the sides and have also perused the record carefully.

9. The main portion of the testimony of PW-Mann Singh as placed on record by learned State counsel is as under: -

“That on 15.05.2022 at about 5 PM I was present a village Manjali Kalan at my resident. Near the Baarra of Hardeep Singh son of Bahadur Singh lot many peoples lot many peoples were gathered. Many motorcycles were parked there and Mahindra Jeep was also parked there. On this jeep some Dal was written, exact name I do not remember. I stopped there and came to know that there is some dispute regarding some girl and boy (deceased Avtar Singh). I came to know that family members of Avtar Singh as well as family of girl are being called regarding the elopement of girl and Avtar Singh was being suspected to be behind the elopement. Accused Kulvir Singh and Hardeep Singh and unknown persons as I do not know their names (Nihang sikhs) took Avtat Singh inside the animal Barra of Hardeep Singh. Family members of Avtar Singh also went inside. Then those persons who took Avtar Singh inside started beating Avtar Singh. When family members of Avtar Singh tried to object, they were sent outside forcibly. Cousin of Avtar Singh was also attacked with sticks and was shunted out. Seeing the situation at the spot I did not dare to enter the Barra. Thereafter accused bolted the premises from inside and started beating Avtar Singh. Lot of painful noises of Avtar Singh were being heard. Roughly

after about 30 minutes they opened the door and just like a stack/bag brought Avtar Singh outside and threw Avtar Singh inside the vehicle jeep. Thereafter they took Avtar Singh alongwith them and I came back to my house. Next day in the morning at around 10/11 AM I came to know that Avtar Singh has died in the Dera of accused Nihang Sikhs. Thereafter I approached the police station alter 1 or 2 days thereafter and narrated the incident. I got recorded my statement to the police, perhaps on 20.05.2022.

*I had seen all the accused one by one today in the court. **I identify accused Kulvir Singh son of Nachhattar Singh and Hardeep Singh alias Laddi son of Bahadur Singh both of my village being involved in the incident. They both actively took Avtar Singh inside and were part of the group which beat Avtar Singh.***

I have also seen one of the another accused Bhagwant Singh being of our village. But I had not seen him at the incident spot nor he participated to my knowledge in this incident.

I have also seen other accused whose names I do not know. Their faces were shown to me and I cannot specify and state whether they were present at the spot or not as most of the culprits were having muffled faces.

Court observation. Names of these unidentified persons who are accused and were shown to the witness are:-

Gursewak Singh, Harpreet Singh, Balwinder Singh, Kamaljit Singh, Harshpreet Singh, Sukhwinder Singh and Satwinder Singh.”

10. It is evident from the aforesaid testimony that it is in the presence of the eye witness Mann Singh that Avtar Singh (deceased) was taken inside the *barra* by petitioner Kulvir Singh, Hardeep Singh and other unknown persons, whose names he (witness) did not know and after causing injuries, Avtar Singh was thrown out just like as stack/bag. It has also come in the testimony of Mann Singh that when the premises were

bolted from inside, painful noises of Avtar Singh were being heard.

11. Ld. Counsel for the petitioner has tried to take benefit of the fact that uncle of PW-Mann Singh had criminal litigation with the petitioner and his brother, as admitted by PW Mann Singh during his cross-examination. It is contended that because of this reason, PW-Mann Singh has deposed against the petitioner.

12. However, it is not disputed that statement of PW-Mann Singh was also recorded during investigation under Section 161 Cr.P.C. It will be a matter of appreciation for the Trial Court to see the creditworthiness of testimony of PW-Mann Singh, but at this stage, there is no reason for this Court to ignore the statement. The mere fact that father and two uncles of deceased have not supported the prosecution version, despite the fact that deceased was taken in the *barra* by the petitioner and others in their presence, prima facie support the contention of learned State counsel that circumstances indicate that they were under threats. PW-Mann Singh could not dare to come in the Court and had to hide himself. His testimony could be recorded only through video conferencing, when he had gone to U.S.A.

13. As far as medical condition of the petitioner is concerned, the report dated 01.02.2023 and 20.02.2023 (Annexures P-5 and P-6 respectively) as placed on record by the petitioner, would reveal that after necessary tests, it was found that petitioner was suffering from Prostatomegaly Grade-I. However, he was advised medication and his vital and general condition were found to be stable. He is on oral

medication for his complaint. Thus, it is evident from the medical reports that no surgical intervention or any such treatment is required, which would necessitate the release of the petitioner.

14. Having regard to all the aforesaid facts and circumstances, the gravity of the offence and the manner in which it has been committed but without commenting anything on the merits of the case, this Court finds present case to be unfit for grant of regular bail. As such, the present petition is dismissed.

15. It is made clear that no observation made in this order should influence the mind of the Trial Court, while deciding the case on merits.

October 17, 2023
sarita

(DEEPAK GUPTA)
JUDGE

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