

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.268

CRM-M-31791-2022

Date of decision: 02.03.2023

Gagandeep Singh @ Gaggi

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. R.B.S. Mann, Advocate
for the petitioner.

Mr. Arun Luthra, DAG, Punjab.

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DEEPAK SIBAL, J. (Oral)

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail in FIR No.144 dated 27.08.2019 registered under Sections 302, 34, 460 and 120-B IPC at Police Station Kotbhai, District Sri Muktsar Sahib.

Briefly stated, the case of the prosecution is that Mandeep Kaur, who was Baldev Singh's wife, was having an extra marital affair with Bhinder Singh. When Baldev Singh came to know of such affair he asked Mandeep Kaur to stop meeting Bhinder Singh. Thereafter, Mandeep Kaur and Bhinder Singh, alongwith the petitioner, who is Bhinder Singh's friend, conspired to murder Baldev Singh and in pursuance to such conspiracy Bhinder Singh and the petitioner committed Baldev Singh's murder.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case; the petitioner is in custody since 29.08.2019; complainant Gurtej Singh, who was the deceased's brother, while appearing in the petitioner's trial has greatly improved upon his statement(s) made by him to the police till the filing of the final report by the police under Section 173 Cr.P.C. as till that time Gurtej Singh had nowhere named the petitioner but while appearing before the trial court as a

witness for the prosecution he has falsely named him to be one of the assailants who murdered Baldev Singh; the other prosecution witness Boga Singh who allegedly was the one before whom the petitioner and Bhinder Singh had made extra-judicial confessions of having murdered Baldev Singh, while appearing before the trial court, has not toed the prosecution's line and has denied any extra-judicial confession made before him; the murder weapon allegedly recovered from the petitioner was sent for forensic examination the result of which remains inconclusive; thus, there is no forensic evidence to link the petitioner with the crime he is accused of; the petitioner had no motive to murder Baldev Singh and that since in the petitioner's trial 21 prosecution witnesses still remain to be examined, the same will take a long time to conclude.

Learned State counsel opposes the grant of bail to the petitioner on the ground that the petitioner, alongwith his co-accused, hacked Baldev Singh to death and that the petitioner's involvement in the crime is clearly borne out from the statement of Gurtej Singh.

Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

The evidentiary value of the alleged change in the stand of complainant Gurtej Singh would be debated during the course of the petitioner's trial. However, the petitioner has already undergone over 03 years and 06 months of actual custody; all the material witnesses in the petitioner's trial stand examined; Boga Singh before whom the petitioner had allegedly confessed his crime has turned hostile; the report of FSL, Punjab, does not conclusively establish that the murder weapon allegedly recovered from the petitioner was used in the murder of Baldev Singh and that since in the petitioner's trial 21 prosecution witnesses still remain to be examined, the same is likely to take a long time to conclude.

Keeping in view the totality of the above facts, the present case is considered to be a fit one in which the petitioner be directed to be released on regular bail. Resultantly, subject to the satisfaction of the CJM/Duty Magistrate, Sri Muktsar Sahib, the petitioner is directed to be released on bail.

It is clarified that the above observations have been made only for the limited purpose of deciding the present regular bail application and the same would not be construed to be an expression of opinion on the merits of the case.

There is yet another aspect of the matter.

On 23.02.2023 while considering two matters being CRM-M-35728-2022 – Gurwinder Singh vs. State of Punjab and CRM-M-43219-2022 – Amandeep Singh vs. State of Punjab, this Court had passed the following order:-

“The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail in FIR No.33 dated 23.03.2021 registered under Sections 302, 328, 341, 34 IPC (Sections 148, 149, 120-B IPC added later on) at Police Station Sadar Raikot, District Ludhiana.

The petitioners are alleged to have murdered Rajinder Singh. The postmortem report of Rajinder Singh shows as many as 13 injuries on his person. As per the case of the prosecution, from the petitioners-Gurwinder Singh and Amandeep Singh, two blood stained kirpans, have been recovered. The recovered kirpans and the blood stained soil collected by the police from the dead body of Rajinder Singh were sent for forensic examination. In response to the request made by the police, the Forensic Science Laboratory, Punjab, SAS Nagar (for short, the FSL, Punjab) has sent a report dated 29.04.2021 as per which the parcels sent to it “are stained with human”. This makes no sense. The FSL report is a crucial document. Therefore, the author of such report

should take the same with the seriousness that it deserves. Apparently, it has not been done.

The Director, FSL, Punjab is directed to file an affidavit with respect to the afore casually drafted report.

Adjourned to 20.03.2023.

It has been experienced by this Court that while investigating murder cases, particularly the ones resulting from injuries to the deceased and/or in which the murder weapons stained with/without blood are also allegedly recovered, the only forensic investigation got conducted by the State is as to whether the blood is of human origin. This Court fails to understand as to why the State does not undertake DNA profiling.

Before the adjourned date, DGP, Punjab shall file an affidavit as to why in the afore situation the State does not resort to DNA profiling.

A photocopy of this order be placed on the file of the other connected case.”

A perusal of the afore-quoted order of this Court reveals the casual drafting of FSL reports in those cases. Unfortunately, the casual drafting of the FSL report continues in this case as well. In the case in hand, the State had sent to the FSL, Punjab certain exhibits as also the murder weapon, allegedly recovered from the petitioner, for forensic examination. As per the report dated 18.02.2022, the conclusions drawn by the FSL read as under:-

“From the observations, it is concluded that:

- a. Human blood was **detected** on Dried material (Source: Exhibit A), Manja Soot and Bedsheet (Source: Exhibit B-1, B-2), and Kapa (Source: Exhibit D).
- b. Human Blood **present** on Manja Soot and Bedsheet (Source: Exhibit B-1, B-2) **matches** with the Human Blood detected on Clothes stated stated to be of deceased Baldev Singh (Source: Exhibit C-1, C-2).
- c. The DNA test results for Dried material (Source: Exhibit A) and Kapa (Source: Exhibit D).”

The afore conclusion at item No.c makes no sense.

In this case also the Director, FSL, Punjab, shall explain through an affidavit the casual drafting of the' report.

Be put up for the said purpose on 20.03.2023.

To be heard alongwith CRM-M-35728-2022.

March 02, 2023
Jyoti 1

(DEEPAK SIBAL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No