

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. CRM-M-35728-2022

Gurwinder Singh

. . . . Petitioner

Vs.

State of Punjab

. . . . Respondent

2. CRM-M-43219-2022

Amandeep Singh

. . . . Petitioner

Vs.

State of Punjab

. . . . Respondent

Date of Decision: 01.08.2023

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Anuj Nagrath, Advocate,
for the petitioner (in CRM-M-35728-2022).

Mr.R.S. Randhawa and Mr. Ritesh Pandey, Advocates,
for the petitioner (in CRM-M-43219-2022)

Mr.R.S. Khaira, DAG, Punjab.

Mr. Kartik Gupta, Advocate, for the complainant.

DEEPAK GUPTA, J.

Prayer in both the petitions titled above filed under Section 439
Cr.P.C. is for grant of regular bail in FIR No.33 dated 23.03.2021 registered
at Police Station Sadar Raikot, District Ludhiana for the offences under
Sections 302, 328, 341 / 34 IPC (Sections 148, 149 & 120-B IPC added
later on)

FIR VERSION

2. FIR was lodged on the statement of Jaswinder Singh, as per which on 23.03.2021, he was in his fields when at about 6:30 AM, he was informed by one Baljinder Singh that dead body of his brother Rajinder Singh along with his scooter, was lying on Rasulpur road near Nanaksar Thath. Complainant reached there and found his brother Rajinder Singh to have died having several injuries on his person caused by sharp-edged weapons. Red chilli powder was laying spread there.

INVESTIGATION

3. (i) The Investigating Officer visited the spot, inspected the same and collected physical evidence. Postmortem examination on the dead body of Rajinder Singh was got conducted. 13 injuries were found on the person of the deceased. On 05.04.2021, Surinder Singh @ Sherry son of the deceased Rajinder Singh made a statement under Section 161 Cr.P.C., as per which at the time of occurrence, he was in Canada and came to India on 26.03.2021 after coming to know about the death of his father. He disclosed that his father i.e., deceased used to tell him that Harwinder Singh @ Kakku, Manpreet Singh and Amandeep Singh (*petitioner in CRM-M-43219-2022*) used to use bad language against him whenever they met him on the way and that he (deceased) used to feel danger from them. It was further stated by Surinder Singh that he had made enquiries at his level and came to know that murder of his father was committed by above three persons, i.e., Harwinder Singh @ Kakku, Manpreet Singh & Amandeep Singh along with two others namely Gurwinder Singh (*petitioner in CRM-M-35728-2022*) and Gursewak Singh @ Guri @ Golu.

(ii) Further, as per prosecution, on 06.04.2021, one Ramandeep Singh made statement to the police, as per which the 5 accused named above had made extra judicial confession before him to have committed the murder of deceased Rajinder Singh, after hatching a conspiracy.

(iii) On 12.04.2021, Harwinder Singh @ Kakku, Manpreet Singh and Amandeep Singh (petitioner) were arrested. Gurwinder Singh and Gursewak Singh were also arrested on the same day on the identification of the co-accused. Complainant Jaswinder Singh identified them and informed the IO that he had seen them visiting the house of Harwinder Singh @ Kakku several times.

(iv) On 15.05.2021, one Kamaljeet Singh made statement before the Police and stated that he along with Sikander Singh had witnessed the occurrence. As per him, he had seen Amandeep Singh, Gurwinder Singh along with one unknown person (later on identified as Gursewak Singh) inflicting injuries upon the deceased Rajinder Singh. It was stated by him that Gurwinder Singh had spread chilli powder in the eyes of Rajinder Singh; and then Amandeep Singh and Gurwinder Singh had caused injuries with their kirpan on the head, face, neck and other body parts of Rajinder Singh; whereas, the other person (Gursewak Singh) had given danda blows on the back and thighs of Rajinder Singh. It was further stated by him that he did not disclose about the occurrence earlier to anybody due to fear that assailants could commit his murder also and it is only after the arrest of the assailants that he had made statement before the police.

(v) After completion of investigation, challan was filed in the Court.

CONTENTIONS ON BEHALF OF BOTH THE PETITIONERS

4. It is contended by ld. counsel on behalf of both the petitioners i.e. Gurwinder Singh (petitioner in CRM-M-35728-2022) and Amandeep Singh (petitioner in CRM-M-43219-2022) that they are not named in the FIR; that FIR was lodged against unknown persons; that statement of Surinder Singh @ Sherry son of the deceased is based on hearsay, which is inadmissible; that implication of the petitioners is based upon the statement of an interested prosecution witness namely Kamaljit Singh, whose testimony stand shattered in his cross-examination; that extra judicial confession allegedly made before Ramandeep Singh is not corroborated by any other evidence and even otherwise, it is a weak type of evidence; and that similarly placed co-accused Harwinder Singh @ Kakku, Manpreet and Gursewak Singh have already been allowed bail by this Court. It is contended further that petitioners are in custody for that last more than 2 years and that trial is likely to take long time to conclude and so, the petitioners be allowed bail.

CONTENTION OF THE LD. STATE COUNSEL

5. Refuting the aforesaid contentions, ld. State counsel supported by counsel for the complainant, contended that none of the petitioners can be granted the benefit of bail on the basis of parity, since the case of co-accused Harwinder Singh @ Kakku, Manpreet and Gursewak Singh was on different footing on account of the roles attributed to them. It is further submitted that there is no reason, at this stage, to ignore the eye witness account made by Kamaljeet Singh, as per which it is the petitioners Gurwinder Singh and Amandeep Singh, who caused injuries on the various body parts of the deceased Rajinder Singh with kirpan. It is argued that the

said witness has stood the test of cross-examination and his statement also stands corroborated by the extra judicial confession made before Ramandeep Singh; that Kirpans used in the crime were recovered from the possession of the petitioners and that having regard to all these facts and circumstances, petitioners do not deserve to be released on bail.

ANALYSIS OF THE COURT

6. I have considered submissions of both the sides and have perused the record.

7. No doubt that FIR was lodged against unknown persons and none of the two petitioners are named therein. Statement of PW Surinder Singh @ Sherry son of the deceased is based on hearsay. He is not even the eyewitness, as he even came to India from Canada on 26.03.2021 i.e., 3 days after the occurrence. However, at this stage of considering the bail petitions, there is no reason to ignore the statement of Kamaljit Singh, who is stated to be the eyewitness of the occurrence along with Sikander, and who quite vividly stated the manner, in which injuries were caused to deceased Rajinder Singh by Gurwinder Singh, Amandeep Singh and Gursewak Singh. As per his statement before the Court, as well as the statement made during trial by Kamaljit Singh as PW1, he and Sikander had gone to Nanaksar Gurudwara Sahib at about 6.00 AM on the date of occurrence and were standing in the parking at about 6.15 AM, when on hearing the commotion, they saw over the wall of Gurudwara Sahib that Amandeep Singh and Gurwinder Singh and one unknown person had restrained Rajinder Singh over the road side. Then Gurwinder Singh put chilly power in the eyes of Rajinder Singh and thereafter, Amandeep Singh and Gurwinder Singh armed with Kirpan started giving blows on the person

of Rajinder Singh on head, face, neck and other parts of the body; whereas, third unknown person, later identified as Gursewak Singh, who was carrying danda, started giving danda blows on the person of Rajinder Singh on his back and thighs and after assuring that Rajinder Singh had died, all the assailants fled on their KTM motorcycle along with their respective weapons. Said Kamaljit Singh also deposed before the Court that he and Sikander did not disclose the occurrence to anybody out of fear, feeling that they could be hurt and it is only after the accused were arrested that he and Sikander made up their mind to narrate the occurrence and disclosed the same to the police officials.

8. Ld. counsel for the petitioners has tried to assail statement of PW1 by pleading that he is the relative of the deceased and had even attended the funeral as well as the bhog ceremony of the deceased, but still did not disclose to the family members of the deceased to have witnessed the occurrence and therefore, his statement cannot be relied.

9. The witness Kamaljeet Singh has already given reasons for not appearing earlier before the police or not disclosing the incident to anybody prior to the arrest of the accused-petitioners, so at this stage when only bail petitions are to be considered, there is no reason to disbelieve him. Otherwise also, it will be for the Trial Court to appreciate the testimony of PW1 in this regard.

10. As far as statement of Ramandeep Singh is concerned, no doubt that he is the relative of the deceased and neither the Sarpanch nor other responsible person of the village and even otherwise extra judicial confession is a weak type of evidence, but after analyzing the

trustworthiness thereof by the Trial Court at the appropriate stage, the same can be used at least for the purpose of corroboration.

11. Co-accused Harwinder Singh @ Kakku has already been allowed bail vide order dated 08.02.2022 in CRM-M-739-2022; co-accused Manpreet has been allowed bail vide order dated 27.04.2022 in CRM-M-9198-2022; whereas, co-accused Gursewak Singh @ Guri has been allowed bail vide order dated 22.03.2023 in CRM-M-15569-2022 by a Coordinate Bench of this Court

12. However, none of the petitioners Gurwinder Singh and Amandeep Singh can claim parity with the three co-accused, who have been allowed bail because of the different roles attributed to them. As noticed in the order dated 08.02.2022, whereby co-accused Harwinder Singh @ Kakku was allowed bail; that as per the eye version account of Kamaljit Singh, Harwinder Singh @ Kakku was not attributed any injuries to have been effected upon the deceased and in fact, said Harwinder Singh @ Kakku was not present at the time of alleged occurrence. In the order dated 27.04.2022, whereby co-accused Manpreet was allowed bail, same observation was made to the effect that said Manpreet was not attributed any injury on the deceased nor was present at the spot of occurrence as per the eyewitness account given by Kamaljit Singh. As per order dated 22.03.2023, whereby co-accused Gursewak @ Guri has been allowed bail, it was observed that only role attributed to him 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; whereas, the act of putting chilli powder in the eyes of the deceased and even causing injuries with kirpan was attributed to co-accused Amandeep Singh and Gurwinder Singh and it is after making these

observations that Gursewak Singh @ Guri was allowed bail. The Court had also taken into account the factor that said Gursewak Singh @ Guri was HIV patient and during the period of his interim bail, he had not misused concession of bail.

13. The case of the petitioners Gurwinder Singh and Amandeep Singh is on entirely different footing, inasmuch as the petitioner Gurwinder Singh is attributed to have put chilli powder in the eyes of deceased and then both these petitioners Amandeep Singh and Gurwinder Singh are attributed to have given kirpan blows on the various parts of the body of deceased Rajinder Singh. The postmortem report reveals as many as 13 injuries on the person of the deceased and except injury No.12 and 13, which are on thigh and right shoulder, attributed to co-accused Gursewak, all other injuries are attributed to the petitioners.

CONCLUSION

14. Having regard to all the aforesaid facts and circumstances, the role attributed to the petitioners, gravity of offence and the manner in which the murder of deceased Rajinder Singh was committed, but without commenting anything further on the merits of the case, this Court is of the considered view that none of the petitioners deserve to be released on bail.

Dismissed.

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

(DEEPAK GUPTA)
JUDGE

01.08.2023

Vivek

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |