

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

CRM-M-43898-2021

Date of Decision: 22.08.2023

Anand Kumar

...Petitioner

VS.

State of Punjab

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Ashish Aggarwal, Advocate
 for the petitioner.

Mr. Mohinder Singh Joshi, Addl. Advocate General, Punjab.

N.S.Shekhawat J. (Oral)

The petitioner has filed the instant petition under Section 439 of the Cr.P.C. with a prayer to grant regular bail in case FIR No.37 dated 20.02.2020 registered under Sections 302, 201 of IPC (Section 120-B IPC, 1860 added later on) at Police Station B-Division, District Amritsar City.

The FIR in the present case was registered on the basis of the statement made by Paramjeet Kaur @ Reshma wife of Amrik Singh. As per her, at about 9.00 p.m. on 19.02.2020, Amrik Singh left home by saying that he would come after taking the amount of loan from Anand Kumar son of Ram Lal, accused, which was extended by Amrik Singh to him. However, her husband did not come home and at about 12.00 p.m., the complainant along with Sahil son of Gurmeet Singh went to the house of Anand Kumar and enquired about Amrik Singh. However, Anand Kumar replied that Amrik Singh had left from there about 5/10 minutes ago. After talking to her family

members, the complainant alongwith her brother-in-law Gurmeet Singh and her relative Jagpreet Singh again reached at the house of Anand Kumar and a three wheeler bearing Registration No.PB06-H-8170 was parked outside his house and Anand Kumar was dragging something heavy out from his house. However, on seeing them, he ran away from the spot after leaving that heavy thing and the complainant and other family members saw that it was the dead body of her husband in a pool of blood, which was covered with a bed sheet and found that there were serious injuries on his head. The complainant stated that Anand Kumar, accused had committed the murder of her husband Amrik Singh alias Winkel and he wanted to throw away the dead body. In fact, Anand Kumar had taken some money on credit from her husband and was not returning back the money, even after repeated demands by her husband and consequently, he had committed the murder of Amrik Singh by inflicting injuries on him.

Learned counsel for the petitioner contends that the petitioner has been falsely involved in the present case as he had financial transactions with Amrik Singh, since deceased. In fact, Amrik Singh was killed by some unknown persons and due to financial transaction between the petitioner and the deceased, the petitioner was wrongly involved in the present case. Learned counsel further contends that the petitioner was arrested in the present case on 26.02.2020 and is in custody since then. Apart from that, only five witnesses have been examined, out of total 23 witnesses relied by the prosecution. Learned counsel further contends that since the material witnesses have been examined by the prosecution and the petitioner is in custody since long time, his further custody will serve no meaningful purpose. Learned counsel further

relies upon the order (Annexure P-1) passed by this Court in CRM-M-31826 of 2021, whereby, Suman, wife of the petitioner has been granted the concession of bail by this Court.

On the other hand, learned State counsel has vehemently opposed the prayer made by learned counsel for the petitioner on the ground that the petitioner is the main accused and is not entitled for grant of bail in the present case. Learned counsel further submits that the complainant and the other witnesses had noticed the presence of the petitioner at the time of commission of crime and the petition is liable to be dismissed by this Court.

I have heard the learned counsel for the parties and perused the record with their assistance.

The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting bail, no doubt the seriousness of the charge is one of the relevant considerations, which should be taken into account, but this Court also has to take into consideration the circumstances, which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, custody of the under trial, chances of threatening the witnesses etc. In the present case, no doubt the allegations levelled by the present petitioner are very serious in nature, however, this Court cannot be oblivious of the fact that the petitioner was arrested in the present case on 26.02.2020 and the petitioner is continuing in custody as an under trial for the last about 03 years and 06 months. Once an accused continues as under-trial for such a long period, there is no doubt that his rights under Article 21 of the

Constitution of India are violated, which is the most basic right of all Fundamental Rights. Even otherwise, the Hon'ble Supreme Court has held in a number of judgments that an under trial prisoner cannot be detained in jail custody to an indefinite period and every person, detained or arrested is entitled to speedy trial. This Court is conscious of the fact that on the one hand, the petitioner continues to be in custody for almost 03 and a half years, whereas on the other hand, only five witnesses have been examined, out of total 23 witnesses and the learned trial Court may take considerable time in concluding the trial proceedings.

Thus, without commenting on the merits of the case, the present petition is allowed. The petitioner is ordered to be released on bail pending trial on his furnishing bail bonds and surety to the satisfaction of the concerned trial Court/ Duty Magistrate/Chief Judicial Magistrate subject to the following conditions:-

- (i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.
- (ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.
- (iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.
- (iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.

(v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.

(vi) In case, the petitioner involves in any other criminal activity, during the pendency of the trial, it shall be viewed seriously.

(vii) The concerned Court may insist on two heavy local sureties and may also impose any other condition, in accordance with law, while accepting the bails bonds and surety bonds of the petitioner.

(viii) The petitioner shall report every 1st Monday in English calander month before the concerned SHO till the conclusion of the trial and SHO shall mark his presence by making an entry in the rojnamcha. In case, he does not report on every 1st Monday before the concerned SHO, it shall be viewed seriously and the concession granted to him shall be liable to be cancelled and the State of Punjab shall be at liberty to move an appropriate application in this regard.

22.08.2023
hemlata

(N.S.SHEKHAWAT)
JUDGE

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