

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.46003 of 2022 (O&M)
Date of decision: 19.07.2023

Sema Khan
.....Petitioner
Versus
State of Punjab
.....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. G.S. Ghumman, Advocate
with Mr. P.S. Maan, Advocate
for the petitioner.

Mr. Teevar Sharma, AAG, Punjab.

Mr. Gopal Singh Nahel, Advocate
for the complainant.

ARVIND SINGH SANGWAN J.

CRM-29023-2023

Heard.

Allowed as prayed for.

Documents (Annexures A-1 and A-2) are taken on record
subject to all just exceptions.

CRM-M-46003-2022 (O&M)

Prayer in this 2nd petition is for grant of regular bail to the
petitioner under Section 439 of the Code of Criminal Procedure (in
short 'Cr.P.C.') in FIR No.0079 dated 15.08.2021, for offence punishable
under Sections 302, 34 of the Indian Penal Code, 1860 (in short 'IPC')
registered at Police Station Sandaur, District Sangrur.

The earlier one was dismissed as withdrawn on 19.05.2022.

Counsel for the petitioner has submitted that the new ground for filing this 2nd petition is that the custody of the petitioner is 01 year and 07 months; two main eye-witnesses/complainant have already been examined and there is no possibility of tampering with the prosecution evidence and also in view of the role attributed to the petitioner as per the statement of PW-1 and PW-2.

Brief facts of the case are that the FIR was registered on the statement of PW-1 Avtar Singh, stating that his father (since deceased) Ujagar Singh was aged about 70 years. A day prior to the incident i.e. on 14.08.2021 at about 08:00 PM in the evening, his father restrained the co-accused Bikkar Singh and his wife Gurwinder Kaur not to park their vehicle in the street. On this, Bikkar Singh and his wife started abusing him in front of their house. The matter was brought to notice of Sarpanch Amarjit Singh and on the day i.e. on 15.08.2021 at about 08:40 AM, a panchayat was convened, in which again, Bikkar Singh, his wife Gurwinder Kaur and sister-in-law Gurjeet Kaur, abused his father. Later on, when his father came on the street, Gurwinder Kaur hit the mother of the complainant on her forehead and thereafter, people intervened and send them home. It is stated that at about 09:45 AM, when the parents of the complainant were going to attend a ceremony of their nephew and reached the main road, Bikkar Singh, his wife Gurwinder Kaur, sister-in-law Gurjeet Kaur and friend Sema Khan (petitioner herein) encircled his father and gave him beatings and kick blows. His father fell down and when he raised alarm, the complainant

alongwith Amarjit Singh reached there and thereafter, he was taken to the hospital where he was declared dead.

Counsel for the petitioner has submitted that no motive is attributed towards the petitioner though, it is stated that on two previous incidents i.e. one on 14.08.2021, the parties exchanged hot words and on the next day i.e. on 15.08.2021, there was a panchayat convened and again, the accused side abused the complainant side.

Counsel for the petitioner has further submitted that in both the incidents, the petitioner was not present and his presence is shown only at the time of third incident, when it is alleged that the deceased Ujagar Singh was given fist and kick blows. It is also submitted that on a complaint given by the petitioner, the Senior Superintendent of Police, Malerkotla got an enquiry conducted and the Superintendent of Police, Malerkotla, submitted a report to this extent:-

“Conclusion Report

From the enquiry, Sema Khan son of late Sadiq Mohammad, resident of Village Dhanno, proves to be innocent in the case because Sema Khan has not been involved in the fight or giving beating to Ujjagar Singh at the time of alleged incident. Therefore, it is required to declare Sema Khan as innocent in the case.

Recommendations

If approved, appropriate directions be issued to the Station House Officer, Police Station Sandaur to declare Sema Khan son of Late Sadiq Mohammad, resident of Dhanno innocent and to

initiate appropriate proceeding against the remaining accused and to produce/present the challan in the court.

*Sd/-
Superintendent of Police,
Malerkotla.”*

Counsel for the petitioner has further contended that in the enquiry, the petitioner was found innocent and it will be a matter of trial whether he was present at the spot or not.

Counsel for the petitioner has next argued that as per the post-mortem report, no external injury was found and as per the Chemical Examiner report, the cause of death was acute myocardial infraction i.e. heart attack, which was sufficient to cause death.

Counsel for the petitioner has further submitted that now the complainant, who is son of the deceased is examined as PW-1, in which again he has reiterated the version given in the FIR and has not named the petitioner in the first two incidents and with regard to the incident of causing injury, it is stated that all the four accused including the petitioner caused fist and kick blows upon which, his father raised alarm and he along with PW-2 Amarjit Singh, reached at the spot. It is also submitted that in the statement again, no motive is attributed towards the petitioner and in cross-examination, it is stated that the petitioner is only a labourer.

Counsel for the petitioner has further contended that since both the eye-witnesses have been examined and there is no possibility of tampering with the prosecution evidence and the enmity, if any, was with Bikkar Singh and his family members and as per the role of the

petitioner is stated to be in third incident, when four persons i.e. Bikkar Singh, his wife Gurwinder Kaur, sister-in-law Gurjeet Kaur and Sema Khan (present petitioner) gave fist and kick blows and Ujagar Singh fell down on earth and became unconscious.

It is also admitted that out of 17 PWs, PW-1 is examined whereas the cross-examination of PW-2 is going on. The medical evidence as stated by counsel for the petitioner is not disputed in the affidavit.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail.

Counsel for the complainant has also opposed the prayer on the ground that the petitioner has actively participated in the offence.

In reply, counsel for the petitioner has referred to the order dated 12.09.2022 passed in CRM-M No.28529 of 2022 vide which one of the co-accused Gurjeet Kaur is granted the concession of regular bail by the Co-ordinate Bench of this Court, noticing the fact that in the post-mortem report, no injury was found on the body of the deceased.

After hearing the counsel for the parties, without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 01 year and 07 months; the co-accused of the petitioner is already released on bail; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required; he was not present at the first two incidents as noticed above; both the complainant and the eye-witness have already been

examined; out of 17 PWs, only 02 PWs have been examined so far and the conclusion of the trial will take some time, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

19.07.2023

yakub

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No